

125 South Dakota Avenue, 8th Floor  
Sioux Falls, South Dakota 57194



February 13, 1998

RECEIVED

Mr. William Bullard, Executive Director  
Public Utilities Commission  
State Capitol Building  
Pierre, South Dakota 57501

FEB 17 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Dear Mr. Bullard:

On July 1, 1996 U S WEST Communications filed revised pages from our Access Service Tariff. Portions of that filing were approved by the Commission in Docket 96-107. However, the following pages were not acted upon by the Commission:

<u>Section</u>	<u>Page</u>	<u>Release</u>
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U S WEST requests the Commission approve these revised pages. If you have any questions, please call me on 605-335-4596.

Sincerely,

A handwritten signature in cursive script, reading "Colleen E. Sevoid".

Colleen E. Sevoid  
Manager-Regulatory Affairs

Attachment

# U S WEST COMMUNICATIONS, INC.

Access Service

Tariff

SECTION 2

Page 17

Release 2

Effective: 6-13-97

State of South Dakota

Issued: 7-1-96

## 2. GENERAL REGULATIONS

### 2.3 OBLIGATIONS OF THE CUSTOMER

#### 2.3.8 CLAIMS AND DEMANDS FOR DAMAGES (Cont'd)

- C. The customer(s) shall not attempt to hold the Company or the Company's employees, agents, contractors or invitees liable for, and shall hold harmless and indemnify the Company and its employees, agents, contractors or invitees from and against, demands, claims, causes of action, liabilities (including punitive damages), costs or expenses (including reasonable attorneys fees), incurred by customer(s), its employees, agents, contractors, or invitees, arising from any acts, omissions or negligence of customer, its agents employees, contractors, invitees or visitors or any violation or non-performance of any law, ordinance or governmental requirement of any kind; or any injury or damage to person or property of customer, its agents, employees, contractors, invitees or visitors, arising out of the use of Company services or property, where the injury or damage is caused by any reason other than the willful misconduct of Company, its agents, employees or contractors.

Notwithstanding the foregoing, any and all real or personal property damage sustained by an interconnector shall be recovered through the interconnector's own insurance coverage, as mandated in 2.3.13.

#### 2.3.9 COORDINATION WITH RESPECT TO NETWORK CONTINGENCIES

The customer shall, in cooperation with the Company, coordinate in planning the actions to be taken to maintain maximum network capability following natural or man-made disasters which affect telecommunications services.

#### 2.3.10 JURISDICTIONAL REPORTS REQUIREMENTS

##### A. Jurisdictional Determinant

Pursuant to Federal Communications Commission order FCC 85-145 adopted April 16, 1985, interstate usage is developed as though every call that enters a customer network at a point within the same state as that in which the called station (as designated by the called station number) is situated is an interstate communication and every call for which the point of entry is in a state other than that where the called station (as designated by the called station number) is situated is an interstate communication.

When mixed interstate and intrastate access service is provided on the same Access Service transmission path, all charges between interstate and intrastate are provided as set forth in 2.3.12, following.

# U S WEST COMMUNICATIONS, INC.

## Access Service Tariff

SECTION 2

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Effective: 6-13-97

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## 2. GENERAL REGULATIONS

### 2.3 OBLIGATIONS OF THE CUSTOMER

#### 2.3.10 JURISDICTIONAL REPORTS REQUIREMENTS (Cont'd)

##### B. Jurisdictional Requirements

The customer must indicate a projected Percent of Interstate Use (PIU) factor in a whole number (i.e., a number 0 - 100) when ordering Switched Access Service in a LATA, including EF and DTT Facilities. When a customer-provided PIU factor is required and the customer has previously submitted a Jurisdictional Report (i.e. Letter on File [LOF]) as set forth in C., following, the LOF PIU factor is required on each Access Service Request (ASR).

Where jurisdiction can be determined from the call detail, the Company will develop a projected PIU factor from the call detail which will be used to bill the customer. Where call detail is insufficient to determine the jurisdiction, the customer will provide a Jurisdictional Report indicating the projected PIU factor in a whole number (i.e., a number 0 - 100). The Company will use the Jurisdictional Report to bill all interstate and intrastate rates and/or nonrecurring charges until the Company receives a revised report from the customer as set forth in C., following.

##### 1. Feature Group A or Feature Group B

###### a. Feature Group A (FGA) to be Resold

Upon ordering FGA Service to be resold, the customer shall state in its initial order a projected PIU factor as set forth in B., preceding. The PIU factor is reported by LATA. When the customer reports a LATA-level PIU factor, the specified percentage applies to all end offices within the LATA.

The projected PIU factor is used by the Company to apportion the originating and terminating usage between interstate and intrastate until a revised report is received as set forth in C., following. The number of access minutes (either the measured minutes or the assumed minutes) is multiplied by the projected PIU factor to develop the interstate access minutes. The number of access minutes minus the developed interstate access minutes is the developed intrastate access minutes. This PIU factor is in addition to the PIU factor as set forth in 3., following.

###### b. Feature Group A (FGA) Not to be Resold

For FGA Service not to be resold, the customer shall state in its initial order a projected PIU factor of zero percent (0%) by line-side termination or access service group.

# U S WEST COMMUNICATIONS, INC.

## Access Service Tariff

SECTION 2

Page 18.1

Release 1

Effective: 6-13-97

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## 2. GENERAL REGULATIONS

### 2.3 OBLIGATIONS OF THE CUSTOMER

#### 2.3.10 JURISDICTIONAL REPORTS REQUIREMENTS (Cont'd)

##### c. Feature Group B (FGB) Service

Upon ordering FGB Service, the customer shall state in its initial order a projected PIU factor as set forth in B., preceding. The PIU factor is reported by LATA. When the customer reports a LATA-level PIU factor, the specified percentage applies to all end offices within the LATA.

The projected PIU factor for FGB Service used by the Company to apportion the originating and terminating usage between interstate and intrastate is developed in the same manner as in a., preceding. This PIU factor is in addition to the PIU factor as set forth in 3., following.

##### 2. Feature Group C or Feature Group D

##### a. Originating FGC or FGD Service

When a customer orders FGC or FGD Switched Access Service(s), where the jurisdiction is determined from the call detail, the Company will develop the projected PIU factor according to such jurisdiction. The projected interstate percentage is developed on a monthly basis, by end office, when the originating FGC or FGD access minutes are measured, by dividing the measured interstate originating access minutes by the total originating access minutes.

##### b. Terminating FGC Service

When a customer orders terminating FGC Switched Access Service, the data used by the Company to develop the projected PIU factor for originating FGC access minutes is used to develop the projected PIU factor for such terminating access minutes. When originating call details are insufficient to determine the jurisdiction for the call, the customer may supply the projected PIU factor by LATA[1] or authorize the Company to use the Company developed percentage for such call detail. The Company will designate the number obtained by subtracting the projected PIU factor for originating and terminating access minutes calculated by the Company from 100 (100 - Company calculated projected interstate percentage = intrastate percentage) as the intrastate percentage of use.

- [1] When the customer reports a LATA-level PIU factor, the specified percentage applies to all end offices within the LATA.

(M) Material moved from Page 18.

(M1) Material moved from Page 19.



# U S WEST COMMUNICATIONS, INC.

## Access Service Tariff

SECTION 2

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Issued: 7-1-96

## 2. GENERAL REGULATIONS

### 2.3 OBLIGATIONS OF THE CUSTOMER

#### 2.3.10 JURISDICTIONAL REPORTS REQUIREMENTS

##### B.2. (Cont'd)

##### c. Terminating FGD Service

For terminating access minutes on Feature Group D, the customer has the following options; 1) allow the Company to develop the projected PIU factor using the method described for terminating access on Feature Group C, preceding or 2) provide the Company with a projected PIU factor.

Upon ordering terminating FGD Service, the Company will develop the projected PIU factor as in b., preceding, until the Company receives a letter from the customer (by certified U. S. Mail return receipt requested) authorizing the Company to develop the projected PIU factor from a customer-provided report as set forth in C., following.

Customers who choose to provide a PIU factor for terminating access for Feature Group D access minutes shall supply a percentage in a whole number (i.e., a number 0 - 100) by LATA. The Company will designate the number obtained by subtracting the projected terminating interstate percentage from 100 as the projected terminating intrastate percentage of use. When the customer reports a terminating LATA-level PIU factor, the specified percentage applies to all end offices within the LATA. The projected PIU factor supplied by the customer is used by the Company to apportion the terminating usage between interstate and intrastate until a revised report is received as set forth in C., following.

Subsequent to the initial order for terminating FGD Service, customers may request to change from a quarterly customer-provided PIU factor to a Company-developed PIU factor as described for FGC, preceding. The customer must notify the Company (by certified U. S. Mail return receipt requested) no later than fourteen (14) days after the first of January, April, July and October in order for the Company-developed PIU factor to serve as the basis for the next three months' billing beginning in February, May, August and November, respectively.

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# U S WEST COMMUNICATIONS, INC.

## Access Service Tariff

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## 2. GENERAL REGULATIONS

### 2.1 OBLIGATIONS OF THE CUSTOMER

#### 2.3.10 JURISDICTIONAL REPORTS REQUIREMENTS

##### B. Jurisdictional Requirements (Cont'd)

3. Entrance Facility and Direct-Trunked Transport Facility  
Excludes Voice Grade (VG) EF and DTT for Feature Group A

For EF and DTT facilities, the customer has the following jurisdiction options: 1) allow the Company to develop the projected LATA-level PIU factor using a mechanized program as set forth in a., following or 2) provide the Company with a projected LATA-level PIU factor via a quarterly jurisdictional report as set forth in b., following.

Customers initially ordering Switched Access Services in the LATA for the first time, shall provide on the access order a LATA-level PIU factor for new EF and DTT facilities based on all the originating and terminating traffic using such facilities. The Company will use the LATA-level PIU factor from the customer's initial order for service as the LATA-level PIU factor for the Company's mechanized program for the first quarter of new service only. After the first quarter of new service, the Company will develop the LATA-level PIU factor as described in a., following until the Company receives a certified letter from the customer authorizing the Company to develop the projected PIU factor from a customer-provided report as set forth in b., following.

##### a. Company-Developed EF and DTT PIU Factor

The Company-developed LATA-level PIU factors for EF and DTT facilities are updated on a quarterly basis by calculating the customer's average billed Interstate usage (excluding VG EF and DTT facilities for CSL or FGA) for the last three months. The Company will perform the calculation for the revised LATA-level PIU factor no later than the last business day in January, April, July and October, respectively. The Company-developed LATA-level PIU factor will serve as the basis for the customer's next three months' advance billing beginning in February, May, August and November, respectively.

When existing customers order additional EF and DTT facilities for Switched Access Service, the Company will determine the LATA-level PIU factor where jurisdiction can be determined from previously billed usage. The PIU factor is based on the average billed Switched Access Interstate usage (excluding VG EF and DTT facilities for FGA) per LATA, per customer on a quarterly basis. When the Company is unable to determine the LATA-level PIU factor for EF and DTT facilities for an existing customer because usage data is not being billed to that customer, the Company will apply a default PIU factor of fifty percent (50%).

# U S WEST COMMUNICATIONS, INC.

## Access Service Tariff

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Effective: 6-13-97

State of South Dakota  
Issued: 7-1-96

### 2. GENERAL REGULATIONS

#### 2.3 OBLIGATIONS OF THE CUSTOMER

##### 2.3.10 JURISDICTIONAL REPORTS REQUIREMENTS

###### B. Jurisdictional Requirements (Cont'd)

###### 3.a. (Cont'd)

The PIU factor is expressed as a whole number (i.e., a number from 0 - 100). The PIU factor is used by the Company to determine interstate and intrastate rates and charges. The PIU factor is applied to all rate elements associated with the EF and DTT facilities. This PIU factor is in addition to the PIU factors set forth in 1. and 2., preceding, and 5., following.

###### b. Customer-Provided EF and DTT PIU Factor

Customers who choose to provide a projected LATA-level PIU factor for EF and DTT facilities, shall notify the Company by letter (certified U S Mail return receipt requested) authorizing the Company to develop the projected LATA-level PIU factor from a customer-provided quarterly report. Customer's choosing to provide a projected LATA-level PIU factor shall base the PIU factor on all the originating and terminating traffic using the EF and DTT facilities in the LATA. The customer-provided jurisdictional report must be received by the Company no later than fourteen (14) days after the first of January, April, July and October in order for the customer-provided PIU factor to serve as the basis for the next three month's advance billing beginning in February, May, August and November, respectively. The Company will program the customer-provided revised PIU factor into the Company's billing data base no later than the last business day in January, April, July and October, respectively. If the customer does not provide the jurisdictional report in time for the Company to program the billing data base, the Company will continue to develop a LATA-level PIU factor for the quarter as the Company's billing data base can only be programmed with one PIU process at a time in the same quarter.

(M) Material moved from Page 20.

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## 2. GENERAL REGULATIONS

## 2.1 OBLIGATIONS OF THE CUSTOMER

## 2.1.1 JURISDICTIONAL REPORTS REQUIREMENTS

## 2.1.1.a (Cont'd)

- c. Voice Grade (VG) EF and DTT facilities for Feature Group A (FGA) to be Resold (C)  
(C)

Customers initially ordering a VG EF and a DTT facility for FGA to be resold shall provide a projected PIU factor for each new facility. These PIU factors shall reflect all originating and terminating traffic using these facilities and are in addition to the PIU factors as set forth in 1.a., preceding. (T)  
(T)

The PIU factor for the VG EF and DTT facility will be applied to all rate elements associated with the EF and DTT facility.

The PIU factor is expressed as a whole number (i.e., a number from 0 - 100). The PIU factor will be used by the Company to determine interstate and intrastate rates and charges. If the customer does not provide the Company a Switched Access PIU factor for an EF or DTT facility, the Company will apply a default PIU factor of fifty percent (50%). (T)

The PIU factor will be used by the Company until a revised PIU factor is reported as set forth in C., following. A Switched Access LATA-level PIU factor shall be provided for all VG EF and for all DTT facilities provided within a LATA for Feature Group A for the revised reports. These PIU factors will account for both the originating and terminating traffic of all services using these facilities within the LATA.

- d. Voice Grade (VG) EF and DTT facilities for Feature Group A (FGA) not to be Resold (N)  
(N)

Customers initially ordering a VG EF and a DTT facility for FGA not to be resold shall state a projected PIU factor of zero percent (0%) for each facility. This PIU factor is in addition to the PIU factor as set forth in 1.b., preceding. (N)

## 4. Tandem-Switched Transport

For Tandem-Switched Transport, rates and charges will be apportioned by the Company between interstate and intrastate based upon the PIU factor for the serving arrangement (Feature Group), as set forth in 1. and 2., preceding, and 5., following.

# U S WEST COMMUNICATIONS, INC.

Access Service

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State of South Dakota

Issued: 7-1-96

Effective: 6-13-97

## 2. GENERAL REGULATIONS

### 2.1 OBLIGATIONS OF THE CUSTOMER

#### 2.1.10 JURISDICTIONAL REPORTS REQUIREMENTS

##### B. Jurisdictional Requirement (Cont'd)

#### 5 SHARP on Switched Access Service

When a customer orders SHARP on Switched Access Service, the customer shall in its order provide the projected PIU factor for the SHARP facility in addition to the projected PIU factor as set forth in 2. and 3., preceding, in a whole number (i.e., a number 0 - 100). The Company will designate the number obtained by subtracting the projected interstate percentage furnished by the customer from 100 as the projected intrastate percentage of use.

The customer-reported PIU factor will be used until the customer reports a different projected PIU factor as set forth in C., following. The reported PIU factor shall be reported per customer premises where the SHARP facility is provided.

#### 6. LIDB

When a customer orders LIDB Service, the customer shall state in its order the projected PIU factor in a whole number (i.e., a number of 0 - 100). The Company will designate the number obtained by subtracting the projected interstate percentage furnished by the customer from 100 as the projected intrastate percentage of use. The projected PIU factor is used by the Company to apportion the LIDB Access Query and LIDB Validation Query percentage of use between interstate and intrastate until a subsequent order is received. LIDB jurisdiction may be changed by service order without charge as described in 6.7.1. C.2., following. A jurisdictional report as described in C., following will not be required.

#### 7. CCSAC

When a customer orders CCSAC, the customer shall state in its order a PIU factor in a whole number (i.e., a number of 0 - 100). The Company will designate the number obtained by subtracting the projected PIU factor furnished by the customer from 100 as the projected intrastate percentage of use. The projected PIU factor is used by the Company to apportion the monthly and nonrecurring charges associated with the CCS Link, STP Port, Entrance Facility and Direct Link Transport between interstate and intrastate. If the customer does not provide a PIU factor, the Company will apply a default PIU factor of fifty percent (50%).

The PIU factor will be used by the Company until a revised PIU factor is reported as set forth in C., following. A LATA-level PIU factor shall be provided for CCSAC Service provided within a LATA for the revised reports.

**U S WEST COMMUNICATIONS, INC.**

**Access Service  
Tariff**

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**State of South Dakota**

**Issued: 7-1-96**

**Effective: 6-13-97**

**2. GENERAL REGULATIONS**

**2.3 OBLIGATIONS OF THE CUSTOMER**

**2.3.10 JURISDICTIONAL REPORTS REQUIREMENTS**

**B. Jurisdictional Requirement (Cont'd)**

**8. Billing Name and Address Service**

When a customer orders Billing Name and Address Service, the customer shall state in its order the PIU factor in a whole number (i.e., a number of 0 - 100). The Company will designate the number obtained by subtracting the PIU factor furnished by the customer from 100 as the projected intrastate percentage of use. This percentage will remain in effect until a revised jurisdictional report is received as set forth in C., following.

(D)

(D)

# U S WEST COMMUNICATIONS, INC.

## Access Service Tariff

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Effective: 6-13-97

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Issued: 7-1-96

## 2. GENERAL REGULATIONS

### 2.3 OBLIGATIONS OF THE CUSTOMER

#### 2.3.10 JURISDICTIONAL REPORTS REQUIREMENTS (Cont'd)

##### C. Jurisdictional Reports

Except where Company measured access minutes are used as set forth in B.2. preceding, the customer-provided PIU factor will be used until the customer reports a different projected PIU factor based on the following guidelines:

The customer shall update the interstate and intrastate PIU factor via jurisdictional report on a quarterly basis. The customer shall report the PIU factor by traffic and service type for each LATA. The customer shall forward to the Company a revised report, to be received no later than fourteen (14) days after the first of January, April, July and October. The revised report shall show the PIU factor for the most current data available, for each service arranged for interstate use. This data shall consist of at least three (3) and no more than twelve (12) consecutive months of data, ending no more than 75 days earlier than the date the report is due (e.g., for the report due January 15th, the last month of data should be no earlier than October 31). The updated PIU factor shall be based on call detail records. The PIU factor can be based on a statistically valid sample. The PIU factor reported in January, April, July and October will be effective on the bill date of each such month and will serve as the basis for the next three months' billing beginning in February, May, August and November, respectively.

No prorating or back billing will be done based on the report. However, usage will be billed utilizing the interstate percentage that was in effect at the time the usage was generated.

When the quarterly reports are not supplied by the customer, the following steps, as set forth in 1. through 5. following, will be taken by the Company.

1. If the customer does not supply the reports, the Company will assume the PIU factors to be the same as those provided in the last quarterly report. For those cases in which a quarterly report has never been received from the customer, the Company will assume the PIU factors to be the same as those provided in the order for service as set forth in B., preceding.

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE ESTABLISHMENT</b>	)	<b>ORDER APPROVING TARIFF</b>
<b>OF SWITCHED ACCESS RATES FOR U S</b>	)	<b>REVISIONS</b>
<b>WEST COMMUNICATIONS, INC.</b>	)	
	)	<b>TC96-107</b>

On June 24, 1996, U S WEST Communications, Inc. (U S WEST) filed for approval by the Public Utilities Commission (Commission) its 1995 switched access cost study. According to the application, the study develops an overall average calculated rate of \$0.056 per minute required to recover the costs of providing switched access. The following companies were granted intervention: Sprint Communications Company L.P. (Sprint); MCI Telecommunications Corporation (MCI); Express Communications, Inc. (Express); AT&T Communications of the Midwest, Inc. (AT&T); Telecommunications Action Group (TAG); and Dakota Cooperative Telecommunications, Inc. (DCT).

The Commission also found that pursuant to SDCL 49-31-12.4, the rate increase should be suspended for 120 days. A hearing was held on October 9 and 10, 1996, before the Commission. At a regularly scheduled meeting of the Commission on December 9, 1996, the Commission moved to reopen the record for the taking of more evidence. On January 15, 1997, AT&T moved the Commission to (1) disapprove the application of U S WEST for an increase in switched access rates and (2) to close this docket. A hearing on this motion was held before the Commission on January 23, 1997. Commissioner Nelson did not participate in these proceedings. At an ad hoc meeting on January 27, 1997, the Commission granted the motion of AT&T.

The matter was appealed to the Sixth Judicial Circuit Court for the State of South Dakota which remanded the matter to the Commission by Order dated May 29, 1997. A prehearing conference was held on July 2, 1997, and a Prehearing Order on Reopening Record was issued July 3, 1997. This Order rejected Commission staff's testimony in the October, 1996, hearing, directed a new staff analysis in the case and certain financial reviews by staff, and specified issues which the Commission wanted addressed consistent with its Motion of December, 1996. A hearing on the reopened record was held on September 10 and 11, 1997.

On December 17, 1997, U S WEST Communications filed tariff sheets implementing the Commission's November 24, 1997, decision establishing switched access rates effective December 1, 1997. "This filing does not waive the right of U S WEST to appeal the Commission's decision, nor does it waive any issues concerning this matter which may be waived in any other regulatory or judicial proceedings." U S WEST requested an effective date of December 1, 1997.



The following tariff sheets were filed on July 1, 1996, with regard to the Access Service Tariff and were made effective June 13, 1997, except for Section 3, Page 18, Release 2, which was never put into effect, but which was replaced by Section 3, Page 18, Release 3, filed June 17, 1997, as listed below:

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2	23.2	1
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2	22	2
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2	24	2
3	16	2
6	146	2
6	154	2

The following tariff sheets were filed on June 17, 1997, with regard to the Access Service Tariff and were made effective June 13, 1997. These sheets removed pay phone subsidies and pay phone language from the Access Tariff pursuant to the 1996 Telecommunications Act. The subsidies arose because of the above tariff implementation so concurrent removal was necessary:

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20	5	2
20	12	2

The following tariff sheets were filed on December 17, 1997, with regard to the Access Service Tariff and made effective December 1, 1997:

<u>Section</u>	<u>Page</u>	<u>Revisions</u>
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At its regularly scheduled meeting on January 20, 1998, the Commission considered this matter. Commission Staff recommended approval.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31 and ARSD 20:10:27 and 20:10:28. The Commission unanimously voted to approve the above revisions to U S WEST's Access Service Tariff. It is therefore

ORDERED, that the Commission approves U S WEST's revisions to its Access Service Tariff effective as noted above.

Dated at Pierre, South Dakota, this 27<sup>th</sup> day of March, 1998.

<p align="center"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: <u><i>Alaine Kalls</i></u></p> <p>Date: <u>3/30/98</u></p> <p align="center">(OFFICIAL SEAL)</p>	
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BY ORDER OF THE COMMISSION:

*James A. Burg*  
 JAMES A. BURG, Chairman

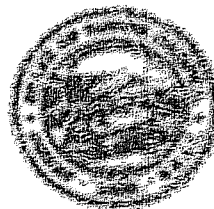
*Pam Nelson*  
 PAM NELSON, Commissioner

*Laska Schoenfelder*  
 LASKA SCHOENFELDER, Commissioner

File 177-1

# South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



November 2, 1998

Ms. Mary Erickson  
Clerk of Courts  
P. O. Box 1238  
Pierre, SD 57501-1238

Re: In the Matter of the Establishment of Switched Access  
Rates for U S WEST Communications, Inc., et al.  
Civ. 98-406 (Docket TC96-107)

Dear Ms. Erickson:

Enclosed you will find our original file with reference to the above captioned matter. Also enclosed you will find a Chronological Index, Alphabetical Index and Certificate of Service. We have served a copy of the Chronological Index and Alphabetical Index on all interested parties.

Very truly yours,

Camron Hoseck  
Special Assistant Attorney General

CH:dk  
Enc.

Capital Office  
Telephone (605) 773-3701  
FAX (605) 773-3829

Transportation/  
Waterways Division  
Telephone (605) 773-8286  
FAX (605) 773-3225

Consumer Hotline  
1-800-332-1772

TTY Through  
Relay South Dakota  
1-800-877-1113

Internet  
http://www.state.sd.us

Jim Gary  
Chairman  
Dana Nelson  
Vice-Chairman  
Linda Schwechdt  
Commissioner

William Ballard Jr.  
Executive Director

Edward R. Anderson  
Robert Best  
Martin C. Bergman  
Charles Balle  
Joe Claben  
Evan E. Conner  
Markus Fiedrich  
Markus Fyfe  
Linda Hanson  
Katie Harford  
Lori Healy  
Camron Hoseck  
Dave Jacobson  
Bob Knuthe  
Debbie Kollen  
Jeffrey P. Lorenson  
Tony Nieren  
Gregory A. Ralov  
Thomas Stangor  
Barbara M. Wagnon  
Kathleen Aida Wirt

STATE OF SOUTH DAKOTA )  
 )  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
  
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE ESTABLISHMENT OF ) CHRONOLOGICAL INDEX  
SWITCHED ACCESS RATES FOR U S WEST )  
COMMUNICATIONS, INC. (TC96-107) ) CIV. 98-406

NO.	DATE	CHRONOLOGICAL INDEX	PAGE NUMBER
1	6/9/98	Proposed Stipulation as to Waiver of Hearing on Remand, Including Cover Letter	1-10
2	6/11/98	Letter from Karen E. Cremer to Thomas J. Welk	11
3	6/16/98	Letter from Thomas H. Harmon to Thomas Welk	12-13
4	6/18/98	Letter from John S. Lovald to Thomas J. Welk	14
5	6/19/98	Stipulation as to Waiver of Hearing on Remand, Including Cover Letter	15-23
6	6/22/98	Letter from Thomas J. Welk to Camron Hoseck	24
7	6/22/98	Letter from John S. Lovald to Thomas J. Welk	25
8	7/6/98	Commission Post Remand Procedural Order	26
9	7/31/98	Brief of Telecommunications Action Group, Including Cover Letter and Certificate of Service	27-35
10	8/4/98	MCI's Brief on Remanded Issues, including Cover Letter	36-42
11	8/5/98	Sprint's Brief on Remand, Including Cover Letter	43-49
12	8/5/98	Brief of AT&T, Including Cover Letter	50-55
13	8/5/98	U S WEST's Brief on Remand, Including Two Cover Letters and Certificate of Service	56-63
14	8/19/98	Telecommunications Action Group's (TAG) Rebuttal Brief on Remand, Including Cover Letter and Certificate of Service	64-69
15	8/20/98	Letter from John S. Lovald to William Bullard, Jr	70
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17	8/20/98	U S WEST's Proposed Modifications to Findings of Fact and Conclusions of Law	75-76
18	8/20/98	Certificate of Service	77
19	8/26/98	Letter from David Gerdes to William Bullard, Jr.	78



STATE OF SOUTH DAKOTA )  
 )  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
  
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE ESTABLISHMENT OF ) ALPHABETICAL INDEX  
SWITCHED ACCESS RATES FOR U S WEST )  
COMMUNICATIONS, INC. (TC96-107) ) CIV. 98-406

NO.	DATE	ALPHABETICAL INDEX	PAGE NUMBER
12	8/5/98	Brief of AT&T, Including Cover Letter	50-55
9	7/31/98	Brief of Telecommunications Action Group, Including Cover Letter and Certificate of Service	77-79
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2	6/11/98	Letter from Karen E. Cramer to Thomas J. Welk	11
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3	6/16/98	Letter from Thomas H. Harmon to Thomas Welk	12-13
4	6/18/98	Letter from John S. Lovald to Thomas J. Welk	14
7	6/22/98	Letter from John S. Lovald to Thomas J. Welk	25
15	8/20/98	Letter from John S. Lovald to William Bulford, Jr.	70
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10	8/4/98	MCI's Brief on Remanded Issues, Including Cover Letter	38-42
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11	8/5/98	Sprint's Brief on Remand, Including Cover Letter	43-49
5	6/19/98	Stipulation as to Waiver of Hearing on Remand, Including Cover Letter	15-23
14	8/19/98	Telecommunications Action Group's (TAG) Robust Brief on Remand, Including Cover Letter and Certificate of Service	64-69
13	8/5/98	U S WEST's Brief on Remand, Including Two Cover Letters and Certificate of Service	56-63



[illegible]



CERTIFICATE OF SERVICE  
CIV. 98-406

I hereby certify that copies of the Chronological Index and Alphabetical Index were served on the following by mailing the same to them by United States Post Office First Class mail, postage thereon prepaid, at the address shown below on this the 2nd day of November, 1998.

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Mr. David A. Gerdes  
Attorney at Law  
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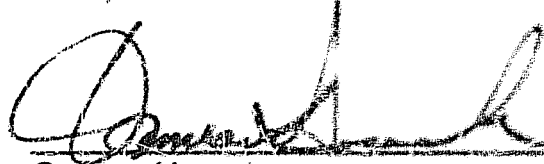
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Camron Hoseck  
Special Assistant Attorney General  
South Dakota Public Utilities Commission  
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John A. McFarland

J. W. Brown (204-777-1111)  
John E. Murphy (204-777-1111)

June 8, 1998

RECEIVED

✓ Camron Hoseck, Staff Attorney  
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Robert C. Riter  
Riter, Mayer, Hofer, Wattier & Brown  
P.O. Box 280  
Pierre, SD 57501

Re: U S West Communications, Inc. v. Public Utilities Commission of South Dakota  
(Hughes Co. - Civ 97-462) (Switched Access)  
Our File No. 2104-96-107

Dear Counsel:

I have spoken with Camron Hoseck, counsel to the Commission in this matter, and suggested that the parties save the time and expense of an additional hearing on the remand of this matter to consider Exhibits 154 and 160 as directed by the order dated May 12, 1998 entered by Judge Zinter. Camron suggested that we try to accomplish the waiver of hearing by written stipulation if all of the parties will agree.

I am enclosing a proposed Stipulation which attempts to accomplish this waiver. I would appreciate it if you would let me know if your client will be willing to sign such a stipulation. I would appreciate it if you would notify Camron and me as to your client's position on this matter.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &  
GREENFIELD, LLP



Thomas J. Welk

TJW/vjj

Enclosures

cc: Jon Lehner



**U S WEST Communications, Inc.**

**By: \_\_\_\_\_**  
**Att: Attorney Thomas J. Welk**



**South Dakota Public Utilities Commission**

**By: \_\_\_\_\_**  
**For: Attorney Camron Hoseck**

AT&T Communications of the Midwest, Inc.

By: \_\_\_\_\_

Attorney John Lovald

MCI Telecommunications Corporation,

By: \_\_\_\_\_

for Attorney David A. Gerdes



Sprint Communications Company, L.P.,

By: \_\_\_\_\_  
Attorney Thomas H. Harmon

Dakota Telecommunications Group, Inc.

By: \_\_\_\_\_

Its: President Tom Hertz

Telecommunications Action Group

By: \_\_\_\_\_

Re: Attorney Robert C. Riter

# South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-1070



June 11, 1998

Mr. Thomas J. Weik  
Attorney at Law  
Boyce, Murphy, McDowell & Greenfield, L.L.P.  
P. O. Box 5015  
Sioux Falls, SD 57117-5015

Re: U S WEST Communications, Inc. v.  
Public Utilities Commission of South Dakota  
Civ. 97-462  
Your File No. 2104-96-107

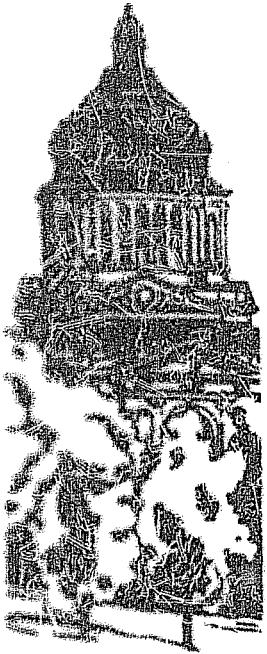
Dear Tom:

Enclosed you will find the signature page which I have signed with reference to the Stipulation as to Waiver of Hearing on Remand in Civ. 97-462

Very truly yours,

Karen E. Cremer  
Staff Attorney

KEC:dk  
Enc.



Capitol Office  
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FAX (605) 773-3809

Transportation/  
Warehouse Division  
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FAX (605) 773-3235

Consumer Hotline  
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TTY Through  
Relay South Dakota  
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Jon Berg  
Chairman  
Paul Nelson  
Vice-Chairman  
Linda Schmiedler  
Commissioner

William Bullard Jr.  
Executive Director

Edward A. Anderson  
Markus Bloz  
Martin C. Rottmann  
Charlie Belle  
Joe Cichos  
Karen E. Cremer  
Wendy Fuchsbach  
Marlene Fugitt  
Linda Hammond  
Katie Hartford  
Lore Healy  
Cynthia Honeck  
Dave Jacobson  
Bob Knadle  
Dianne Kolbo  
Jeffrey P. Lorenzen  
Terry Norum  
Gregory A. Rindov  
Tammi Stangor  
Sharon M. Wegman  
Reynolds Aida Virent

Spring Communications Company, L.P.

A handwritten signature in dark ink, appearing to read "Anthony Hansen", is written over a horizontal line.

Mr. Anthony Thomas H. Hansen

TC 96-11

LAW OFFICES  
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JOHN S. LOVALD  
JAMES ROBBENNOLT  
LEE C. "KIT" McCAHREN  
WADE A. REIMERS

TELEPHONE SERVICE  
ADDITIONAL SERVICE  
FOR THE PUBLIC

June 17, 1998

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JUN 14 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

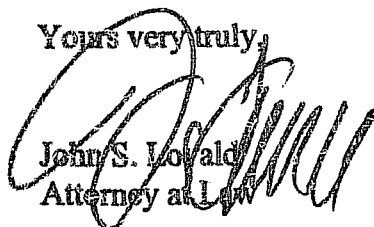
Boyce, Murphy, and McDowell  
Attn: Thomas J. Welk  
P.O. Box 5015  
Sioux Falls SD 57117-5015

Re: US West Communications, Inc. v. Public Utilities Commission

Dear Tom:

As I advised you last week, I have received authority from my client to execute the proposed stipulation. Consistent with the action taken by the other attorneys, I am enclosing herewith my executed signature page for use on that stipulation.

Yours very truly,

  
John S. Lovald  
Attorney at Law

Enclosure

cc: Cameron Hoseck  
David Gerdes  
Thomas Harmon  
Tom Hertz  
Robert C. Riter

[illegible][illegible]

June 16, 1998

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SECRET

**Dea Cameron:**

Please find enclosed the original Stipulation as to Waiver of Hearing on Remand that I have executed along with the original signature pages from Karen Cremer on behalf of Commission staff, Dave Gardes, Tom Harmon, Bob Riter and Tom Hertz.. John Lovald has also called me and indicated that he had no objection to signing the stipulation. By copy of this letter I am asking him to send the original signature page directly to you.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &  
GREENFIELD, L.L.P.

GREENFIELD, LI  
*[Signature]*

Thomas J. Weik

WMI

## Enclosures

**Karen Cremer**  
**Dave Gerdes**  
**John Lovald**  
**Tom Harmon**  
**Bob Riter**

STATE OF SOUTH DAKOTA )  
:SS  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE  
ESTABLISHMENT OF SWITCHED  
ACCESS RATES FOR U S WEST  
COMMUNICATIONS, INC.

Civ. 97-462

U S WEST COMMUNICATIONS, INC.

Petitioner,

AT&T COMMUNICATIONS OF THE  
MIDWEST, INC., SPRINT  
COMMUNICATIONS COMPANY, L.P.,  
MCI TELECOMMUNICATIONS  
CORPORATION,  
TELECOMMUNICATIONS ACTION  
GROUP AND DAKOTA  
TELECOMMUNICATIONS GROUP,

Intervenors,

ON APPEAL FROM THE SOUTH  
DAKOTA PUBLIC UTILITIES  
COMMISSION

STIPULATION AS TO WAIVER OF  
HEARING ON REMAND

RECEIVED

JUN 11 1998


SOUTH DAKOTA  
JUN 11 1998

The Circuit Court of Hughes County on the 12th day of May, 1998 entered an Order of Affirmance and Remand. The parties, through their undersigned attorneys, stipulate and agree that the Public Utilities Commission of the State of South Dakota ("Commission") may consider Exhibits 154 and 160 without further hearing. The parties do, however, reserve the right to make any oral or written arguments that the Commission desires to receive after consideration of these exhibits.

It is further stipulated and agreed that Exhibits 154 and 160 can be considered as confidential information under the Commission's administrative rules.



U S WEST Communications, Inc.

By:   
Its: Attorney Thomas J. Welk

AT&T Communications of the Midwest, Inc.

By: 

Attorney John Loyalk

Sprint Communications Company, L.P.,

By: Thomas H. Harmon

Its: Attorney Thomas H. Harmon

MCI Telecommunications Corporation,

By: 

Its: Attorney David A. Gerdes

6/11/98

Telecommunications Action Group

By:  \_\_\_\_\_

Its: Attorney Robert C. Riter

Dakota Telecommunications Group, Inc.

By: T. W. Hertz

Its: President Tom Hertz  
CEO & Chairman,

South Dakota Public Utilities Commission Staff

By: Karen E. Cremer  
Its: Attorney Karen E. Cremer

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.  
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OK Received  
John R. McDowell

J. W. Brown (336-1751)  
John S. Murphy (336-2061)

June 18, 1998

JUN 22 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Mr. Cameron Hosek  
S.D. Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

RE: U S WEST Switched Access Rate Appeal  
Docket TC96-107

Dear Cameron:

Please find enclosed the original signature page of John Lovald for AT&T. Please add this to the Stipulation as to Waiver of Hearing on Remand sent to you earlier this week.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &  
GREENFIELD, L.L.P.



Thomas J. Weik

TJW/vj

Enclosures

cc: Karen Cremer  
Dave Gerdes  
John Lovald  
Tom Harmon  
Bob Riter



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WADE A. REIMERS

TELEPHONE 838-4521  
AREA CODE 605  
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June 17, 1998

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JUN 22 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

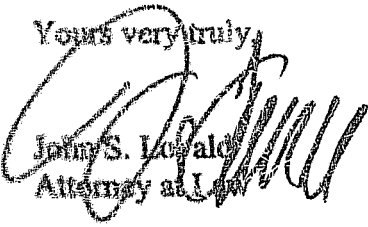
Boyce, Murphy, and McDowell  
Attn: Thomas J. Welk  
P.O. Box 5015  
Sioux Falls SD 57117-5015

Re: US West Communications, Inc. v. Public Utilities Commission

Dear Tom:

As I advised you last week, I have received authority from my client to execute the proposed stipulation. Consistent with the action taken by the other attorneys, I am enclosing herewith my executed signature page for use on that stipulation.

Yours very truly,

  
John S. Lovald  
Attorney at Law

Enclosure

cc: Cameron Hoseck  
David Gerdes  
Thomas Harmon  
Tom Hertz  
Robert C. Riter

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE ESTABLISHMENT )  
OF SWITCHED ACCESS RATES FOR U S )  
WEST COMMUNICATIONS, INC. )

POST REMAND  
PROCEDURAL ORDER  
TC98-107

On May 12, 1998, the Honorable Steven L. Zinter of the Circuit Court, Sixth Judicial Circuit, entered an Order of Affirmance and Remand in Hughes County Civil action 97-402. Subsequent to the entry and notice of entry of that Order, the parties to this docket entered into a stipulation allowing the South Dakota Public Utilities Commission (Commission) to consider Exhibits 154 and 160 from the administrative hearing without the necessity of a further hearing.


The Commission having received and filed the above-referenced stipulation desires the parties to submit written briefs as to their respective positions regarding those Exhibits 154 and 160 and to file proposed amendments to the findings of fact and conclusions of law which have been entered in this docket. The Commission has authorized its executive director to enter such an Order; it is hereby Ordered that:

1. The parties to this docket shall submit simultaneous briefs not to exceed 15 pages in length with regard to the evidence contained in Exhibits 154 and 160 within 30 days of the date of this Order; and
2. Reply briefs not to exceed 5 pages in length shall be filed within 15 days of the service of the initial briefs ; and
3. Proposed modifications to the findings of fact and conclusions of law which have been previously entered by the Commission in this docket shall be filed by the parties with either the initial or reply brief. Any modifications shall be either submitted separately or, if incorporated into the findings of fact and conclusions of law which have already issued by the Commission, they shall be typed in such a manner that the changes are apparent.

Dated at Pierre, South Dakota, this 14<sup>th</sup> day of July, 1998.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
by <u>William Bullard</u>	
Date <u>7/6/98</u>	
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:  
Commissioners Burg, Nelson and  
Schoenfelder

  
WILLIAM BULLARD, JR.  
Executive Director

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E. RITER (1918-1994)  
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WILLIAM D. HOFER  
SCOTT E. RITER, JR.  
DAVID L. WATTIER  
DAVID L. BROWN

RECEIVED

July 31, 1998

JUL 31 1998

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
State of South Dakota  
900 East Capitol  
Pierre, SD 57501

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Re: In the Matter of the Establishment of  
Switched Access Rates for U S West  
Communications, Inc.

Dear Mr. Bullard:

Herewith hand delivered to you please find original and ten  
(10) copies of Brief of Telecommunications Action Group, as well  
as original Certificate of Service for filing in your office.

I also enclose copy of the first page of the Brief for date  
stamping.

Thank you.

Very truly yours,

RITER, MAYER, HOFER, WATTIER &  
BROWN, LLP

By: 

JLW-wb

Enclosures

JUL 31 1998

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT ) TC 96-107  
OF SWITCHED ACCESS RATES FOR U S ) BRIEF OF TELECOMMUNICATIONS  
WEST COMMUNICATIONS, INC. ) ACTION GROUP

COMES NOW, the Telecommunications Action Group (TAG) and submits this Brief for consideration by the Public Utilities Commission on the issues remanded to it. Those issues as indicated by Judge Zinter's Order relate to Exhibits 154 and 160 and what impact those exhibits may have, if any, upon the previous Findings of Fact and Conclusions of Law and Order of the Public Utilities Commission.

#### ARGUMENT AND AUTHORITIES

1. Exhibit 160, which relates to the percentage of interstate usage (PIU) of the various telecommunications companies operating in South Dakota, does not eliminate 'rate shock' nor does it show that the access rate price sought by U.S. West is affordable.

In its prior Findings, the Public Utilities Commission found that the increase proposed by U.S. West was neither affordable nor in the public interest and that it would constitute rate shock. (Finding of Fact IX(r)) That conclusion was in large part in recognition of the current full service telecommunications availability in the United States.

The interstate rate is not established by the South Dakota Public Utilities Commission. Rather the intrastate rate is the one established, and the proper access charge element of that rate is the question presented herein. SDCL 49-31-1.4(3) prescribes in determining the appropriate price, among other

things, the "affordability" of the price must be considered. The increase sought by U.S. West was estimated to be a 107% increase in the switched access rate for intrastate usage. Finding of Fact IX(a).

Intrastate switched access is the single largest cost ingredient in the TAG member companies' retail Intralata toll product. (Transcript, Second Hearing, hereinafter TR, Susskind p. 487) Mr. Susskind had the opportunity to analyze the net income as a percent of revenue of TAG member companies, and the effect of the proposed rate increase upon them. See, p. 4, Exhibit 36. He suggested that the specific percentage of PIU is not pertinent standing alone. Rather, an analysis of that combined with other factors is what is important. (TR p. 496)

This is particularly true inasmuch as the testimony from Dr. Wilcox, U.S. West's witness, was that 13% of the carriers had less than a 50% PIU. As Exhibit 160 indicates, at least one of the carriers involved does significant intrastate business in South Dakota. While certain of the other companies did have a higher PIU, the weighted average was apparently 81%. (TR p. 609-610) Some of the carriers in that weighted 81% are located outside of South Dakota. Even Dr. Wilcox admitted that if rates are raised for intrastate switched access above the competition and companies thereby lose intrastate customers, they may also lose their ability to do business in the competitive interstate services market. (TR p. 598)

Regardless of what the PIU is for any particular

carrier. U.S. West is both the provider of the input and maintains the majority of the retail market for the service that uses the input. (TR p. 488) This position would well motivate establishment of a high price for the product. (TR p. 489)

Mr. Susskind testified that one particular TAG company was more of a pure play company in providing intrastate services. Although that company recognized the same percentage increase in intrastate switched access charges as all other companies, its "percentage decrease in net income is far more damaging than the group average," because of the particular PIU involved. (P. 491, lines 15-16) Its net income as a percent of revenues would be reduced from over 10% to a negative figure. Id.

Furthermore, while interstate rates may have been lowered, companies are foreclosed from offering just interstate services as this would create a difficult, if not impossible, selling proposition. (TR p. 493) TAG member companies are in a particular bind regardless of their PIU indicator. Most TAG member companies provide intralata tolls to small and medium business customers. As Mr. Susskind recognized, they are pressured on one side by national carriers and each other, and on the other side, by the discounted retail products that U.S. West offers. (TR p. 494)

Mr. Susskind testified that PIU's standing alone have little bearing on the question of whether or not the intrastate access rate sought by U.S. West was proper. He testified at length as to a situation where the PIU for a South Dakota company

was the same as the PIU for a nationwide company. One would assume that they would therefore be competing on an equal basis. However, with the South Dakota company, the PIU might apply to 60% of their business. The rate increase would therefore apply to a significant portion of their total costs, whereas with the nationwide company you would be considering a much less significant portion of costs. As Mr. Susskind testified: "The overall scale of business outside of the state of South Dakota that's not impacted by this issue is really what is important." (TR p. 497, at lines 21-23) Accordingly, the proposed increase has a disproportionate impact on carriers who predominantly operate in South Dakota.

Additionally, as Mr. Susskind testified:

Furthermore, I don't see what bearing the overall downward trend in interstate access charges has on saying that increasing the intrastate costs of carriers in South Dakota somehow evens out that it is equitable in the end. I don't see the relationship there. (TR p. 498, lines 18-23)

The Findings previously entered by the Commission, and evidenced by the testimony, also confirm that little weight should be given to Exhibit 160. The monthly increase to Midco's average business customer would be \$50.00 to \$75.00. Obviously, this considers the PIU question, yet it is a dramatic impact upon one South Dakota company. See, TR p. 301 and Finding of Fact IX(c). Furthermore, Staff testified that the proposed rate was very burdensome on resellers, and that opinion was not limited by any PIU issues. (See Rislov testimony, TR p. 236, Finding of Fact IX(g))

Also, the definition of rate shock as established by the Commission in Finding of Fact IX(h) was defined as "the effect on a utility's customers when a utility implements a significantly increased rate immediately or in a relatively short span time." The proposal by U.S. West would have immediately increased the rate by 107%. Whether that applied to 5% of the business of a company or 60% of the business of a company matters little as it is a significant increase imposed within a short period timespan.

TAG members suggest that the Public Utilities Commission should determine the weight to be given to the evidence. 29 Am. Jur. 2d, Evidence, §1431, p. 807. See also, Gross v. Sta-Rite Industries, Inc., 322 NW 2d 679 (N.D. 1982), wherein it was stated by our neighboring jurisdiction as follows:

The amount of weight given to any source of evidence is in the province of the trial court. P. 684.

A specific percentage of interstate usage standing alone carries little weight. It does not negate rate shock, nor does it show that the price for the service is affordable. Many other competitive factors, as suggested by Mr. Susskind and considered above, clearly show that such a price would not be affordable. Particularly as regards nationwide companies, it can place South Dakota based companies in a distinct competitive disadvantage, whether their PIU is 40% or 90%. The decreases they might receive in interstate rates are also received by large nationwide carriers who have a small percentage of their expenses attributable to South Dakota intrastate costs. Hence, giving



Exhibit 160 the weight to which it is entitled does not mandate any modifications in the Public Utilities Commission's prior Findings, Conclusions and Order.

2. Exhibit 154 reflecting the switched access rates by other South Dakota companies serving other South Dakota areas is of little significance.

In its prior Findings, the Public Utilities Commission considered switched access charges by other local exchange companies. See Findings of Fact No. VIII(a). Furthermore, that same Finding recognized that the national trend is for such rates to decrease. Findings of Fact No. VIII(c).

If certain of the other companies have rates higher than that sought by U.S. West, there is no mandate that U.S. West ought to charge the same rate, nor does it suggest that an immediate rate increase in the amount suggested by U.S. West is proper. In large part the Public Utilities Commission established a graduated increase in intrastate switched access prices to prevent rate shock.

Furthermore, there was no alternative switched access service in the particular market areas handled by U.S. West so as to come within the confines of SDCL 49-31-1.4(1). For the most part, other access providers do not compete in U.S. West's territory. Also, the service areas shown on Exhibit 154 involve significantly less traffic than found in U.S. West territories. Lastly, this Commission previously recognized that the access charges tend to be higher by companies other than U.S. West, however, even acknowledging that, this Commission entered

Findings and Conclusions mandating against an immediate increase such as sought by U.S. West.

#### CONCLUSION

Neither Exhibit 160, nor Exhibit 154 require any modifications in the Commission's prior Findings and Conclusions. The existence of any regulated intrastate access rate which reduces competition by placing interconnecting carriers in a price squeeze by virtue of a local exchange carrier's own retail prices is unacceptable. This is true regardless of jurisdiction or of the magnitude of the access service. In this era of full-service telecom, carriers will provide all types of calling to end users. The distinction between interstate and intrastate long distance calling has certainly blurred in the consumer's eye. To create a situation where one carrier can profitably provide both interstate and intrastate calling, while all other carriers lose money on intrastate calls, results in a drastic reduction of the number of carriers able to offer full-service telecom. Such a reduction in competition harms consumers in the long run by encouraging monopoly market power to one carrier. The prior decision of the Commission should be affirmed in all regards.

Respectfully submitted this 31st day of July, 1998.

RITER, MAYER, HOEFER, WATTIER  
& BROWN, LLP

By: 

Robert C. Riter, Jr.

A member of said firm

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Attorneys for Telecommunications  
Action Group

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JUL 1 1998

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT ) TC 96-107  
OF SWITCHED ACCESS RATES FOR U S ) CERTIFICATE OF SERVICE  
WEST COMMUNICATIONS, INC. )

I, Jerry L. Wattier, certify that a true and correct copy of Brief of Telecommunications Action Group was mailed by first class mail to each of the following on the 31st day of July, 1998:

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August 4, 1998

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AUG 7 1998  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

RE: MCI; US WEST SWITCHED ACCESS RATES  
Docket No: TC96-107  
Our file: 0175.15A

Dear Bill:

Enclosed are original and ten copies of MCI's brief on remand issues in accordance with the Commission's procedural order. Please file the enclosures. I have included an additional face page of the brief. Please date stamp it and return it in the enclosed self-addressed, stamped envelope.

With a copy of this letter, I am forwarding a copy of the brief to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY 

DAG:mw

Enclosures

cc/enc: Service List  
Michel Murray

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AUG 11 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ESTABLISHMENT ) TC96-107  
OF SWITCHED ACCESS RATES FOR )  
U S WEST COMMUNICATIONS, INC., )

MCI'S BRIEF ON REMANDED ISSUES

By its May 12, 1998, order, the Circuit Court, Honorable Steven L. Zinter presiding, remanded this docket to the Commission for the consideration of evidentiary issues involving Exhibits 154 and 160. Aside from these remanded issues involving the presentation of evidence contained in the exhibits and any response to the evidence, the Court affirmed the Commission. This brief is submitted in compliance with the Commission's July 6, 1998, procedural order.

SUMMARY OF ARGUMENT

Neither Exhibit 154 nor Exhibit 160 represented primary evidence of an essential element of U S WEST's case. At best, the evidence was only marginally relevant, and at worst it was either irrelevant or unduly repetitious. Had the evidence been admitted, it would not have affected the outcome of the case.

ARGUMENT AND AUTHORITIES

Exhibit 154 represented U S WEST's request that the Commission take official notice, as provided in the administrative rules, of all switched access rate dockets between 1990 and 1997 of other

local exchange companies. The information set forth on this exhibit was simply cumulative of similar evidence admitted in the first hearing of the docket in October of 1996. SDCL § 1-26-13(1) provides that the rules of evidence applicable to circuit courts also apply in administrative proceedings, provided that certain evidence not otherwise admissible can be admitted ". . . to ascertain facts not reasonably susceptible of proof under those rules . . . ." Nonetheless, the statute goes on to state that irrelevant, incompetent, immaterial or unduly repetitious evidence shall be excluded.

U S WEST is price regulated. As provided in SDCL § 49-31-1.4, in determining whether a price for a noncompetitive service is fair and reasonable, the Commission "shall" determine and consider (1) the price of alternative services, (2) the overall market for the service, (3) the affordability of the price for the service in the market it is offered, and (4) the impact of the price of the service on the commitment to preserve affordable universal service. Additionally, the Commission "shall also consider" the fully allocated cost of providing the service. The proffered evidence is not relevant to the price of alternative services, is cumulative to the Commission's market survey reflected in finding of fact VIII, is irrelevant to the affordability of the price in the market in which it is offered and has no relevance to affordable universal service. Finally, the proffered evidence has nothing to do with

U S WEST's fully allocated cost of providing the service. Whether on the basis that the evidence was unduly cumulative, or that it was irrelevant, it was properly excluded.

However, the bottom line is whether, assuming the evidence to be relevant, its admission would have changed the Commission's ultimate decision. Clearly, other evidence in the record dealt with the same subject, and the evidence would not have changed the Commission's ultimate decision.

Exhibit 160 dealt with confidential information which U S WEST sought to introduce. The apparent purpose of the evidence was to show by percentage of interstate use that one or more of the resellers would not go broke as fast as the others. U S WEST contends this was because the high access rates being paid for intrastate traffic would be offset, to a greater or lesser degree depending upon the interstate traffic of the particular reseller, by lower existing rates in the interstate market.

This evidence has no relevance to the issues framed by SDCL § 49-31-1.4 and the Commission's order. The Commission's jurisdiction encompasses rates within the state of South Dakota, not interstate traffic. The point of a proceeding under SDCL § 49-31-1.4, is whether the rate is too high in the South Dakota market. None of the enumerated factors in SDCL § 49-31-1.4 requires a carrier to be able to show that it will go broke for the price to be too high. The Commission is simply to use its best judgment and expertise to determine whether the proposed price is

fair and reasonable. In the context of the South Dakota market, the proffered evidence was irrelevant, except perhaps to the commission imposed consideration of the effect of the increase upon resellers. In any event, U S WEST was able to make its point through hypothetical examples provided by witness Wilcox, whose testimony was being given when the exhibit was disallowed.

Again, the bottom line is whether the Commission's decision would have been different had this evidence, assuming its relevance, been admitted. Clearly, the evidence would not have changed the Commission's decision. Simply put, the five statutory considerations, plus public interest, rate shock and the effect on resellers were already covered in the record, and this evidence simply was cumulative. Also, the evidence in another form, by way of hypothetical example from witness Wilcox, was presented to the Commission. Exhibit 160 sought to make the same point yet again in a slightly different manner.

MCI does not believe modifications to the Commission's Findings of Fact, Conclusions of Law, Order and Notice of Entry of Order subject to the appeal are necessary. That decision can stand on its own. The Commission should simply enter an order affirming its decision to exclude the evidence, and making an explicit finding that the exhibits, even if admitted into evidence, would not have changed the Commission's decision.




### CONCLUSION

The Commission should enter an order declaring that the evidence was properly excluded, and in any event, upon due consideration of the evidence, it would not have changed the Commission's decision in this docket. Considering the totality of the evidence, the two exhibits offered nothing particularly new for the Commission to consider in deciding the issues before it.

Dated this 4 day of August, 1998.

MAY, ADAM, GERDES & THOMPSON LLP

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### CERTIFICATE OF SERVICE

David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 4 day of August, 1998, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

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VIA FEDERAL EXPRESS

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
500 E. Capitol Avenue, State Capitol  
Pierre, SD 57501

Re: Docket No. TC96-107

Dear Mr. Bullard:

Enclosed for filing, are the original and 11 copies of Sprint's Brief on Remand in the above-referenced docket. Please return one file-stamped copy in the enclosed envelope.

Thank you for your assistance. Please call me if you have any questions.

Very truly yours,

Donald A. Low

DAL/kmm  
Enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ESTABLISHMENT	)	TC 96-107
OF SWITCHED ACCESS RATES FOR	)	SPRINT'S
US WEST COMMUNICATIONS, INC.	)	BRIEF ON REMAND

Sprint Communications Company L.P. (Sprint) submits the following as its Supplemental Brief with regard to Exhibits 154 and 160, pursuant to the Commission's July 6, 1998, Order.

1. *Exhibit 154.* U S WEST's Exhibit 154 simply updated the access charges charged by other local exchange companies in South Dakota. U S WEST apparently introduced the exhibit to reflect prices in the overall South Dakota switched access market. The Commission's November 24, 1997, "Findings of Fact, Conclusions of Law, Order and Notice of Entry of Order," (hereinafter "November Decision") did address the access rates of other South Dakota LECs in paragraph VIII, regarding the overall market for switched access service.<sup>1</sup> Sprint does not believe that the overall conclusions in the PUC's November Decision need to be altered to reflect those updated prices. However, the Commission may wish to make a few revisions to more completely address the significance of other LEC's access rates. In addition to revising the rates contained in subparagraph "a," the Commission may wish to revise subparagraphs "d" and "g" as follows to reflect the different circumstances of U S WEST and other South Dakota LECs with regard to establishment of switched access rates.

---

<sup>1</sup> The Commission correctly did not discuss the access rates of other LEC's under paragraph VII, the price of alternative services, since access services of other LECs are not an alternative for origination and termination of traffic in U S WEST territory.

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Add to end of "a.":

The above local exchange companies in South Dakota, unlike U S WEST, have not elected to subject their access services to price regulation pursuant to SDCL 49-31-1.4. Consequently, establishment of their access rates is not subject to Commission consideration of the four statutory factors besides fully allocated cost.

Revise subparagraph "g" to insert a phrase:

Based on the foregoing and as summarized, the Commission finds that the market for switched access varies depending upon geographical location of the provider of the service, the company providing the service, whether the providing company has elected price regulation of the service, the presence of customers of sufficient means to by-pass U S WEST's switches and what U S WEST has indicated it was willing to charge for switched access service.

2. *Exhibit 160.* This U S WEST exhibit apparently contains proprietary information concerning the percent interstate usage (PIU) factors of the long distance providers that are parties to this proceeding. Exhibit 160 presumably shows which carriers have greater and which have lesser PIU's than the statewide average of 81%. U S WEST has argued that the individual PIU's are relevant to the issue of affordability of its proposed increase in intrastate access rates inasmuch as that more than 100% increase was offset by the 20% decrease in interstate rates that occurred earlier in 1997.

The Commission's November Decision did not directly address U S WEST's arguments in its discussion of affordability and should be revised to do so in light of the Court record. Sprint believes that U S WEST's arguments concerning the implications of the PIU's are specious and do not require a change in the Commission's ultimate conclusions.

As a threshold matter, Sprint suggests that in considering the question of affordability, the Commission should confine itself to the intrastate jurisdiction. SDCL 49-31-1.4 requires consideration of "the affordability of the price for the service in the market it is offered."

Although the precise definition of a "market" was not an issue in the hearing, it is apparent that the focus was on the intrastate access market. For example, U S WEST's evidence on the overall market for access services did not include the interstate market. Obviously U S WEST did not want the Commission to consider the lower interstate access rates when considering one statutory factor-overall market - but does want to use those lower rates to address another factor - affordability. U S WEST cannot have it both ways. Clearly, the PUC has authority only over intrastate rates and not interstate rates. It would be inappropriate for the Commission to consider in this context the actions of the Federal Communications Commission in setting interstate rates.

However, even if the South Dakota PUC were to consider the implications of interstate access rates on the "affordability" of the U S WEST doubling of intrastate rates, there is no basis in the record for the conclusions desired by U S WEST. U S WEST has overlooked a significant aspect of the decrease in interstate access rates which occurred in 1997. U S WEST did not present any evidence as to whether the long distance providers were required, by competitive pressures or regulatory mandate, to flow-through the reduction in access rates to their end-user rates. Without a showing that the IXC's and resellers were able to retain the reduced interstate access costs, there is no sound basis to suggest that the interstate reductions would offset the intrastate increases and make the latter financially more "affordable" for the long distance service providers.

Furthermore, even if the Commission could assume, without evidentiary basis, that the reduced interstate access rates could offset the increase in intrastate rates for companies with high PIU's, the Commission should still find that the more than 100% increase desired by U S WEST was unaffordable. Although Sprint has not seen the proprietary PIU information, it appears that some carriers have PIU's less than 50% and therefore would not have the significant

offset postulated by U S WEST. The PUC has the discretion to find that a 100% increase in access rate is not affordable, even if the impact varies among the access service customers. In other words, just because the increase might be affordable for some does mean that it is affordable for all and there is ample evidence in the record that the increase is not affordable for some of the providers. In contrast to the unsupported general assumptions made by U S WEST, TAG presented testimony concerning the specific adverse financial effects of the requested doubling of intrastate access rates on its individual members.

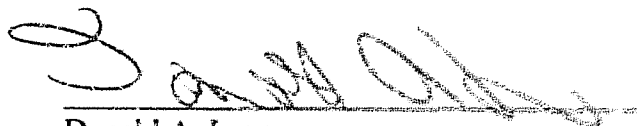
Thus, Sprint believes that the Commission's ultimate conclusions regarding affordability should not be changed in light of Exhibit 160. Although the PUC may wish to revise the findings of fact contained in the November Decision, Sprint will not offer suggested changes until it has reviewed U S WEST's specific arguments.

IN CONCLUSION, the Commission's ultimate conclusions in this matter should not be changed in light of Exhibits 154 and 160 although the findings of fact should be revised to address those exhibits.

Dated: August 4, 1998

Respectfully submitted,

Sprint Communications Company L.P.



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Certificate of Service

The undersigned hereby certifies that the foregoing was served by mailing a copy, postage prepaid, on this 4<sup>th</sup> day of August, 1998 to the persons on the attached service list.

A handwritten signature in dark ink, appearing to be "Richard Tieszen", written over a horizontal line.



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August 5, 1998

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AUG 05 1998

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SOUTH DAKOTA PUBLIC  
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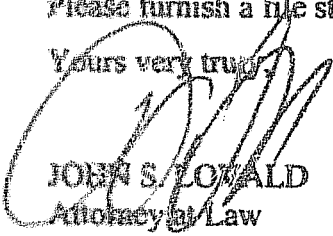
RE: 96-107

Dear Mr. Bullard:

Enclosed herewith please find an original and 10 copies of BRIEF OF ATAI with regard to the above-captioned docket.

Please furnish a file stamped copy to me. Thank you.

Yours very truly,

  
JOHN S. LOVALD  
Attorney at Law

JSL:mmh

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Pursuant to the Order issued by the South Dakota Public Utilities Commission ("The Commission"), AT&T Communications of the Midwest, Inc. ("AT&T") submits the following Brief:

Circuit Court Judge Steven Zinter in his review of the Commission's initial decision and Findings of Fact and Conclusions of Law remanded this case for the specific purpose of allowing the Commission to consider Exhibits 154 and 160, which at the initial hearing were refused admission.

Exhibit 160 is a compilation of the percentage of interstate use ("PIU") relating to the other parties in this docket which had been gathered by U S West Communications, Inc., ("U S West"). The information was offered to rebut impact testimony presented by several of the parties to this proceeding.

AT&T submits that the PIU information concerning AT&T is irrelevant to the Commission's decision. AT&T did not present impact testimony concerning the effect of an increase in switched access rates upon AT&T. Therefore the use of this information concerning AT&T's PIU is irrelevant. The exchange between the Court and counsel for AT&T at page 15 of the transcript of the Court's remand decision affirms this fact. (See attached).

AT&T believes that the other parties to this docket are uniquely positioned to deal with this issue on a company by company basis and would defer to the comments of the non-U S West parties concerning the particular impact of this Exhibit.

## B. EXHIBIT 154

Exhibit 154 was the offer of proof by U S West requesting the Commission to take official notice of all dockets filed from 1990 through 1997 where other local exchange companies sought approval of switched access rates under the Commission's Switched Access Administrative Rules.

While this information is now officially before the Commission, it is clear from the Commission's original Findings of Fact and Conclusions of Law that it has already been considered. Finding of Fact VIII specifically recited some of the higher switched access rates approved by the Commission for some of the smaller local exchange carriers over the past years. It is clear in reviewing Finding of Fact VIII that the Commission was cognizant of those rates and considered them in issuing the original decision. The Circuit Court observed that this issue alone, absent the Court's action on Exhibit 160, probably would not have resulted in a remand. (TRp11).

As the Commission is well aware, following the adoption of the Commission's Switched Access Rules, the smaller local exchange carriers immediately filed cost studies and obtained approval of switched access rates based strictly upon the results of the Commission Computer Cost Model. In contrast, U S West, after initially urging that the Commission not adopt the Computer Cost Model, sought permission of the Commission with the stipulation of AT&T and others, to construct its switched access rates on a rate which mirrored the interstate rate.

The Commission has already approved the U S West Cost Study based upon the Commission's Computer Cost Model with adjustments. The only Commission action that U S West complains about is the Commission's decision to implement the U S West cost in a series of steps. It is clear that Judge Zinter felt that there was more than adequate evidence supporting the Commission's decision to implement the rate in steps. The issue before the Commission is whether officially noticing all LEC approved rates should cause the Commission to amend its original decision.

The answer is obvious that it should not. U S West's actions, which were entirely voluntary in the years following the adoption of the Computer Cost Model, set U S West apart from the other local exchange carriers. Now that U S West has changed its position, and has sought to implement a rate based upon the Computer Cost Model, it is only fair and reasonable for the Commission to:

1. Consider the impact upon other carriers and the public of an immediate implementation of the full rate; and
2. Implement the switched access cost in the series of steps that the Commission determined was appropriate.

AT&T suggests that the Commission amend Finding of Fact VIII to specifically reflect that the Commission has considered the approved switched access rates of all LECs in addition to those that were specifically recited.

## CONCLUSION

Neither of the two exhibits that the Commission is now considering should have any material bearing upon the Commission's original decision. Therefore, AT&T urges that the Commission amends its findings to clarify that the exhibits have been given their proper weight, and then affirm its original decision.

Dated this 21<sup>st</sup> day of August, 1998.

Respectfully submitted,

AT&T COMMUNICATIONS OF THE  
MIDWEST, INC.

by: 

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ESTABLISHMENT  
OF SWITCHED ACCESS RATES FOR U S  
WEST COMMUNICATIONS, INC.

)  
)  
) CERTIFICATE OF  
) SERVICE  
)

I HEREBY CERTIFY that I have served a true and correct copy of the BRIEF  
OF AT&T, upon the following:

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by first class mail, postage prepaid, on this <sup>5th</sup> day of August, 1998.

AT&T COMMUNICATIONS OF THE  
MIDWEST, INC.

by: 

John S. Lovain

Okinger, Lovain, Borchert, & McCarty

P.O. Box 60

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August 5, 1998

FAX Received Aug 4 4 04 PM '98

VIA FACSIMILE - 777-3809

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

Re: In the Matter of Establishment of Switched Access Rates for U S WEST Communications, Inc., Docket No. TC96-107  
Our File No. 2104-96-107

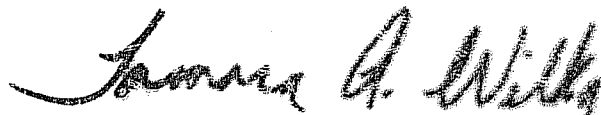
Dear Mr. Bullard:

Please find enclosed for filing copies of U S WEST's Brief on Remand and Certificate of Service. These are being filed via facsimile today and the original and three (3) copies of the Brief and the original Certificate of Service are being mailed today.

U S WEST intends to file additional proposed findings and conclusions with its rebuttal brief pursuant to the Commission's procedural order.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &  
GREENFIELD, L.L.P.



Tamara A. Wilka

TAW/vjj  
Enclosure

cc: Camron Hoseck  
John Lovald  
David A. Gerdes  
Thomas H. Harmon

Thomas Hertz  
Robert C. Riter  
James Gallegos  
Jon Lehner



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August 5, 1998

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224-7101

Re: ~~In the Matter of the Filings for Designation as Eligible Telecommunications Carrier by U S WEST~~  
Communications, Inc., Docket No. TC96-107  
Our File No. 2104-96-107

Dear Counsel:

Enclosed please find a copy of U S WEST's Brief on Remand. This is intended as service upon you via facsimile and by mail.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &  
GREENFIELD, L.L.P.

*Tamara A. Wilka*

Tamara A. Wilka

TAW/vjj  
Enclosures  
cc: James Gallegos  
Jon Lehner

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT )  
OF SWITCHED ACCESS RATES FOR U S WEST )  
COMMUNICATIONS, INC. )

TC 76-107

FAX Received 10/24/97

U S WEST'S BRIEF ON REMAND

U S WEST Communications, Inc. ("U S WEST") submits the following Brief on Remand.

BACKGROUND

This case has a lengthy procedural history. U S WEST filed its 1995 switched cost access study with the Public Utilities Commission of South Dakota ("the Commission") on June 24, 1996. Following a hearing and subsequent motion by AT&T Communications of the Midwest, Inc., the Commission denied any rate increase and closed the docket on January 31, 1997.

U S WEST appealed the Commission's decision and the Circuit Court reversed and remanded. In so doing, it ordered the Commission to determine "forthwith a fair and reasonable switched access rate . . . and render a written decision specifically setting out the rate and prepare a record of its proceedings and findings." Amended Order of Remand, U S WEST Communications, Inc. v. Public Utilities Comm'n of South Dakota, Civ. No. 97-36 (May 29, 1997).

On remand, the Commission ordered Staff to investigate U S WEST's cost study. Staff subsequently launched the "most rigorous" examination ever conducted in a switched access docket. A second hearing was held on September 10, 1997, at which time Staff recommended a switched access rate of 6.1 cents per minute.

The Commission issued its second switched access decision on November 24, 1997. The second decision implicitly adopted Staff's rate but ordered that it be phased in over a two and a half year period to avoid "rate shock." Finding of Fact XIV, Conclusion of Law X. In reaching its decision, the Commission applied the factors set out in SDCL 49-31-124.

U S WEST again appealed. Following oral argument, the Court issued a bench decision affirming the Commission's decision but remanding for reconsideration on two evidentiary issues: (1) the presentation of evidence contained in Exhibit 160 and any response to such evidence; and (2) the presentation of evidence contained in Exhibit 94 and any response to such evidence. Order of Affirmance and Remand at 2.

The parties subsequently stipulated to reconsideration without further hearing but reserved the right to make oral or written arguments to the Commission. The parties further stipulated that Exhibits 154 and 160 can be considered as confidential information under the Commission's administrative rules.

### ARGUMENT

1. The switched access rate proposed by Staff does not constitute "rate shock" for most resellers.

As Judge Zinter noted at oral argument, Exhibit 160 is "extremely relevant and

pertinent" with respect to the issue of rate shock. Transcript of Oral Argument at 76. It demonstrates that contrary to the Commission's earlier findings,<sup>1</sup> rate shock is not an issue for most resellers.

Intrastate long distance service makes up only a portion of the service provided by interexchange carriers operating in the state of South Dakota. Interexchange carriers also offer interstate long distance service. One way to measure the breakdown of these services is to look at the percent interstate usage ("PIU"). Transcript of Sept. 10, 1997 Hearing at 577. Exhibit 160 lists the PIU for all carriers (excluding U S WEST) participating in this docket. There is a substantial difference in range between the highest and lowest PIU. The lowest PIU is forty-percent. The next highest is eighty-percent (80%) ranging all the way up to ninety-seven-percent (97%).

The average PIU is eighty-one-percent (81%). This means that more than four out of five minutes of switched access traffic is interstate traffic. Because the proposed increase would only affect intrastate traffic, its affect would be minimal. To the extent any carriers claim otherwise there are but two explanations: (a) their complaints are unfounded or (b) the

---

<sup>1</sup> The Commission previously found that:

[T]he switched access rate as proposed by either U S WEST or by Commission staff . . . is not affordable by the resellers, that its immediate implementation would constitute rate shock, that to immediately implement such a rate as proposed by either U S WEST or Commission staff is not in the public interest, and that to immediately implement it would constitute an unjust and unfair burden upon switched access customers who subscribe to U S WEST's switched access services and, in turn, their customers.

Finding of Fact IX (r).

information they have furnished is inaccurate.<sup>2</sup>

Exhibit 160 demonstrates that Staff's rate is affordable for most resellers and does not constitute rate shock. Finding of Fact IX(r) is clearly erroneous and must be changed in light of Exhibit 160.

2. The rate proposed by Staff is lower than the rates charged by other carriers.

Although U S WEST does not believe the Commission should apply SDCL 49-31-1 A, two of the factors to be considered in determining a fair and reasonable price are the overall market for the service and the affordability of the price for the service in the market in which it is offered. Exhibit 154 demonstrates that the intrastate switched access rate proposed by Staff is lower than the access rates charged by other carriers. Thus, it is both consistent with the overall market for intrastate switched access service and affordable.

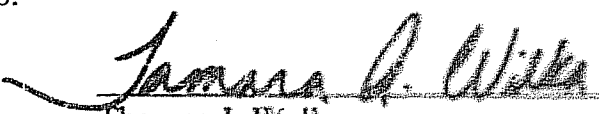
### CONCLUSION

For all of the reasons stated above (and for those reasons previously argued to the Commission), U S WEST requests that the Commission amend its earlier decision to immediately implement Staff's rate.

---

<sup>2</sup> PIU is self-reported by interexchange carriers to U S WEST. *Id.* at 579.

Dated this 5th day of August , 1998.

  
Thomas J. Welk

Tamara A. Wilka

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Attorneys for Appellant

RECEIVED

AUG 6 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ESTABLISHMENT )  
OF SWITCHED ACCESS RATES FOR U S WEST )  
COMMUNICATIONS, INC. )

TC96-107

CERTIFICATE OF SERVICE

I, Tamara A. Wilka, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, and on the 5th day of August, 1998 true and correct copies of U S WEST's Brief on Remand were sent via fax to the following numbers at approximately 4:00 p.m. and via U.S. mail, postage prepaid, to the following addresses:

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AUG 19 1998

August 19, 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
State of South Dakota  
500 East Capitol  
Pierre, SD 57501

Re: In the Matter of the Establishment of  
Switched Access Rates for U S West  
Communications, Inc.

Dear Mr. Bullard:

Herewith hand delivered to you please find original and ten  
(10) copies of Telecommunications Action Group's (TAG) Rebuttal  
Brief on Remand, as well as original Certificate of Service for  
filing in your office.

I also enclose copy of the first page of the Brief for date  
stamping.

Thank you.

Very truly yours,

RITER, MAYER, HOFER, WATTIER &  
BROWN, LLP

By: 

RJR Jr-wb

Enclosures



RECEIVED

AUG 19 1998

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT ) TC 96-107  
OF SWITCHED ACCESS RATES FOR U S ) TELECOMMUNICATIONS  
WEST COMMUNICATIONS, INC. ) ACTION GROUP'S (TAG)  
REBUTTAL BRIEF ON  
REMAND

Pursuant to Order of the South Dakota Public Utilities Commission, Telecommunications Action Group (TAG) hereby submits this rebuttal brief in response to the Brief on Remand submitted by U.S. West on August 5, 1998.

ARGUMENT AND AUTHORITIES

1. EXHIBIT 160, WHICH RELATES TO THE PERCENTAGE OF INTERSTATE USAGE (PIU) OF CERTAIN TELECOMMUNICATIONS COMPANIES OPERATING IN SOUTH DAKOTA, DOES NOT ELIMINATE "RATE SHOCK", NOR DOES IT SHOW THAT THE SWITCHED ACCESS RATE PRICE SOUGHT BY U.S. WEST IS AFFORDABLE.

In its Brief, U.S. West argues that the switched access rate proposed does not constitute "rate shock" for most resellers. (U.S. West Brief, hereinafter U.S.W., p. 2-3) Initially it should be noted that U.S. West neglects to consider all of the factors set forth in SDCL 49-31-1.4 which include whether the price is fair and reasonable and 1) the price of alternative services, 2) the overall market for the service, 3) affordability of the price for this service in the market it is offered and 4) impact of the price of the service on commitment to preserve affordable universal service. Rather, U.S. West inappropriately limits its argument on Exhibit 160 to the question of rate shock. This Commission previously found that the increase proposed was neither affordable nor in the public interest and would constitute rate shock. (Finding of Fact No.

IX(r)). That Finding considers certain of the elements raised by SDCI 49-31-1.4, and the portion of it relating to rate shock is not negated by U.S. West's argument relative to Exhibit 160.

U.S. West's own witness, Barbara M. Wilcox, testified in prefiled testimony and in oral testimony before the Commission during the hearing, that 13% of the small carriers she reviewed had PIU's of less than 50%. (Exhibit 41, prefiled testimony, p. 6, lines 5 and 6, and transcript p. 609). U.S. West argues, however, because so few carriers have PIU's less than 50%, that the increase is not rate shock because interstate rates decreased during a similar time frame. (U.S.W. p. 3-4) This argument presupposes that the resellers and interexchange carriers retained the reduced interstate access costs, however, as set out clearly in Sprint's Brief on Remand, there was no evidence that the long distance providers retained the reduced interstate access costs as opposed to reducing rates to their end users. (See, e.g. Sprint's Brief on Remand, p. 3)

It is also interesting to observe that during her testimony, Ms. Wilcox stated that she had no specific knowledge about how the change in the federal interstate access rate might have impacted smaller carriers. (TR p. 578)

Sprint also made good argument in its Brief that U.S. West did not urge the Commission to consider the overall rate for access charges because the lower interstate access rates would certainly show the doubling of intrastate rates to be non-affordable as compared to other rates in the market. (Sprint,

Id.)

Furthermore, nowhere in its Brief does U.S. West explain why an immediate 107% increase in intrastate switched access rates would not constitute "rate shock" under the definition previously developed by this Commission in Finding of Fact IX(h).

Lastly, despite any contentions by U.S. West to the contrary, it is clear that TAG member companies are particularly disadvantaged by the intrastate switched access rate increases. They are most admittedly pressured on one side by national carriers who can spread out their costs among many large markets, and on the other side by the discounted retail products U.S. West offers. (See, TR p. 494) Accordingly, the customers they serve are similarly disadvantaged. A monthly increase to an average business customer of \$50.00 to \$75.00 cannot be considered fair and reasonable. (TR p. 301 and Finding of Fact IX(c)).

2. EXHIBIT 154 REFLECTING THE SWITCHED ACCESS RATES BY COMPANIES SERVING OTHER SOUTH DAKOTA AREAS IS OF LITTLE SIGNIFICANCE.

U.S. West has submitted no significant argument on this issue. TAG suggests that it is clear there was adequate evidence supporting the Commission's prior decision. Finding of Fact VIII might easily be modified to specifically state that the approved switched access rates of all LEC's have been considered and the evidence supports the Commission's decision to implement a graduated rate increase.

# CONCLUSION

This Commission had discretion to find that a 107% increase is not affordable nor fair and reasonable, even considering Exhibits 154 and 160. Such a finding would be accurate even if the impact of the increase might vary amongst different access service customers. Affordability for some certainly would not mean adequate affordability for the entire market place. Doubling of intrastate access rates on companies such as the TAG members would cause significant adverse financial effects, not only upon the member companies but also upon the ultimate consumers. Such a reduction in competition is not healthy for the industry. The prior decision of the Commission should be affirmed with only minor modifications to the Findings as previously suggested by Sprint and AT&T.

Respectfully submitted this 19th day of August, 1998.

RITER, MAYER, HOFER, WATTIER  
& BROWN, LLP

By: 

Robert C. Riter, Jr.  
A member of said firm  
319 S. Coteau - P. O. Box 288  
Pierre, SD 57501-0288  
Attorneys for TAG

AUG 19 1998

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTASOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT ) TC 96-107  
OF SWITCHED ACCESS RATES FOR U S ) CERTIFICATE OF SERVICE  
WEST COMMUNICATIONS, INC. )

I, Robert C. Riter, Jr., certify that a true and correct copy of Telecommunications Action Group's (TAG) Rebuttal Brief on Remand was mailed by first class mail to each of the following on the 19th day of August, 1998:

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August 18, 1998

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AUG 20 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION


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500 E Capitol  
Pierre SD 57501

RE: DOCKET TC96-107

Dear Mr. Bullard:

I am writing to advise that AT&T Communications of the Midwest, Inc. will not be submitting a reply brief. We feel our original brief, and the briefs submitted by the non-US West parties adequately address the impact of Exhibits 154 and 160 upon the Commission's original Findings of Fact, Conclusions of Law and Decision.

Yours very truly,

  
JOHN S. LOVALD  
Attorney at Law

JSL: dkl

cc: Counsel of Record

REMOVED

**SECRET**

**Abstract**

1. 1. The first part of the report  
2. 2. The second part of the report

**FIVE**

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Robert C. Riter  
James H. Gallegos  
Tom Wells

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August 20, 1998

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Pierre, SD 57501

Re: In the Matter of the Establishment of Switched Access Rates for U S WEST Communications, Inc.,  
Docket No. TC96-107

Dear Counsel:

Enclosed please find a copy of U S WEST's Reply Brief and Proposed Modifications to Findings of Fact and Conclusions of Law. This is intended as service upon you by mail.

Sincerely yours,

BOYCE, MURPHY, McDOWELL &  
GREENFIELD, L.L.P.

Tamara A. Wilka

TAW/vjj

Enclosures

cc: James Gallegos  
Jon Lehner

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AUG 7 - 1998

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE  
ESTABLISHMENT OF SWITCHED  
ACCESS RATES FOR U S WEST  
COMMUNICATIONS, INC.

Docket No. 96-107

FAX Received AUG 8 1998

U S WEST COMMUNICATIONS, INC.

Petitioner,

U S WEST COMMUNICATIONS, INC.'s  
REPLY BRIEF

AT&T COMMUNICATIONS OF THE  
MIDWEST, INC., SPRINT  
COMMUNICATIONS COMPANY, L.P.,  
MCI TELECOMMUNICATIONS  
CORPORATION,  
TELECOMMUNICATIONS ACTION  
GROUP AND DAKOTA  
TELECOMMUNICATIONS GROUP.

Intervenors

ON APPEAL FROM THE SOUTH  
DAKOTA PUBLIC UTILITIES  
COMMISSION

U S WEST Communications, Inc. ("U S WEST") submits the following reply to the  
briefs submitted by Sprint, MCI, TAG and AT&T.

Sprint, MCI and TAG argue that Exhibit 160, which reflects the percent interstate usage  
("PIU") for the parties in this case, is irrelevant because the Commission's jurisdiction is  
confined to intrastate switched access rates. Sprint Brief at 2; MCI Brief at 3; TAG Brief at 1.  
They have missed the mark. Exhibit 160 is relevant because it puts the proposed rate increase  
into context and has a direct bearing on the issue of rate shock which has been raised in this  
proceeding.

The Commission has defined rate shock as "the effect on a utility's customers when a  
utility implements a significantly increased rate immediately or in a relatively short span of

time." Finding of Fact IX(h). The customers in this case are interexchange carriers who provide end users with both intrastate and interstate long distance services. To determine the overall effect of the proposed intrastate switched access rates on these interexchange carriers, one must determine how much of their total switched access traffic is intrastate (as opposed to interstate) traffic. This can be determined by subtracting an interexchange carrier's PIU from its total switched access traffic. The difference represents a carrier's percent intrastate usage. In reviewing Exhibit 160, 80% or more of the total long distance business in South Dakota would be unaffected by the proposed change and only one telecommunications company is significantly impacted. This evidence is undisputed.

The evidence in this case overwhelmingly supports the rates sought by U S WEST (and recommended by Staff). Exhibits 154 and 160 only further solidify U S WEST's position.

Dated this 20th day of August, 1998.

  
\_\_\_\_\_  
Thomas J. Welk

Tamara A. Wilka  
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Attorneys for U S WEST Communications, Inc.

RECEIVED

AUG 24 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE  
ESTABLISHMENT OF SWITCHED  
ACCESS RATES FOR U S WEST  
COMMUNICATIONS, INC.

Docket No. 96-107

U S WEST COMMUNICATIONS, INC.

Petitioner,

AT&T COMMUNICATIONS OF THE  
MIDWEST, INC., SPRINT  
COMMUNICATIONS COMPANY, L.P.,  
MCI TELECOMMUNICATIONS  
CORPORATION,  
TELECOMMUNICATIONS ACTION  
GROUP AND DAKOTA  
TELECOMMUNICATIONS GROUP.

U S WEST COMMUNICATIONS, INC.'s  
PROPOSED MODIFICATIONS TO  
FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

Intervenors

ON APPEAL FROM THE SOUTH  
DAKOTA PUBLIC UTILITIES  
COMMISSION

U S WEST Communications, Inc. ("U S WEST") submits the following proposed modifications to the findings of fact and conclusions of law which have been previously entered by the Commission in this docket.

I. Strike Finding of Fact VIII and insert in its place the following:

Switched access charges by other local exchange companies within South Dakota are:

- a. Local Exchange Carrier Association (an association of independent municipal and cooperative telecommunications companies): \$0.07072 for originating traffic, \$0.09337 for terminating traffic.
- b. Mt. Rushmore Telephone Company: \$0.087 originating and terminating traffic.

- c. Kadoka Telephone Company: \$0.087 originating and terminating traffic.
- d. Dakota Telecommunications Cooperative: \$0.080524 originating traffic and \$0.100024 terminating traffic (SR653-655).

Staff has proposed an average switched access rate in this docket of \$0.061. The Commission finds that the overall market for switched access services in South Dakota is higher than the proposed rate sought to be charged by U S WEST. Exhibit 154.

- 2. Strike Finding of Fact IX and insert in its place the following:

With respect to the affordability of the proposed switched access charges, the Commission finds the following:

- a. Intrastate long distance service makes up only a portion of the service provided by interexchange carriers operating in the state of South Dakota.
- b. Interexchange carriers also offer interstate long distance service.
- c. One way to measure the breakdown of these services is to look at the percent interstate usage ("PIU"). Transcript of Sept. 10, 1997 Hearing at 577.
- d. Exhibit 160 lists the PIU for all carriers (excluding U S WEST) participating in this docket.
- e. There is a substantial difference in range between the highest and lowest PIU. The lowest PIU is forty-percent. The next highest is eighty-percent (80%) ranging all the way up to ninety-seven percent (97%).
- f. The average PIU is eighty-one-percent (81%). This means that more than four out of five minutes of switched access traffic in South Dakota is interstate traffic.
- g. Because the proposed increase would only affect intrastate traffic, its affect would be minimal.
- h. Based on the foregoing and as summarized, the Commission finds that the proposed rate is affordable.

BY THE COMMISSION

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE  
ESTABLISHMENT OF SWITCHED  
ACCESS RATES FOR U S WEST  
COMMUNICATIONS, INC.

U S WEST COMMUNICATIONS, INC.

Docket No. 96-107

Petitioner,

AT&T COMMUNICATIONS OF THE  
MIDWEST, INC., SPRINT  
COMMUNICATIONS COMPANY, L.P.,  
MCI TELECOMMUNICATIONS  
CORPORATION, TELECOMMUNICATIONS ACTION  
GROUP AND DAKOTA  
TELECOMMUNICATIONS GROUP.

Intervenors

ON APPEAL FROM THE SOUTH  
DAKOTA PUBLIC UTILITIES COMMISSION

I, Tamara A. Wilka, do hereby certify that I am a member of the law firm of Bayce, Murphy, McDowell & Greenfield, and on the 20th of August, 1998 true and correct copies of U S WEST's Reply Brief and Proposed Modifications to Findings of Fact and Conclusions of Law were served via US mail, postage prepaid, to the following addresses:

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RECEIVED

AUG 20 1998

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

FAX Received AUG 20 1998

CERTIFICATE OF SERVICE

Tamara A. Wilka

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ROBERT K. SAHR

August 25, 1998

Mr. William Bullard, Jr.  
Executive Director  
Public Utilities Commission  
State Capitol  
500 East Capitol  
Pierre, South Dakota 57501

RECEIVED

SEP 1 1998

RE: MCI; US WEST SWITCHED ACCESS RATES  
Docket No: TC96-107  
Our file: 0175.15A

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Dear Bill:

This will advise you that MCI will not be submitting a reply brief. We believe that our original brief correctly states MCI's position.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

*Dictated by Mr. Gerdes but mailed  
in his absence to avoid delay*

BY:

DAG:mw

cc: Service List  
Michel Murray

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE ESTABLISHMENT</b>	)	<b>AMENDED FINDINGS OF</b>
<b>OF SWITCHED ACCESS RATES FOR U S</b>	)	<b>FACT, CONCLUSIONS OF</b>
<b>WEST COMMUNICATIONS, INC.</b>	)	<b>LAW, ORDER AND NOTICE</b>
	)	<b>OF ENTRY OF ORDER</b>
	)	<b>TC96-107</b>

On June 24, 1996, U S WEST Communications, Inc. (U S WEST) filed for approval by the Public Utilities Commission (Commission) its 1995 switched access cost study. According to the application, the study developed an overall average calculated rate of \$0.066 per minute required to recover the cost of switched access.

On June 27, 1996, the Commission electronically transmitted notice of the filing and the intervention deadline of July 12, 1996, to interested individuals and entities. The following companies were granted intervention on July 30, 1996: Sprint Communications Company L.P. (Sprint); MCI Telecommunications Corporation (MCI); Express Communications, Inc. (Express); AT&T Communications of the Midwest, Inc. (AT&T); Telecommunications Action Group (TAG)<sup>1</sup>, and Dakota Cooperative Telecommunications, Inc. (DCT). Express Communications withdrew from the action. The Commission also found that pursuant to SDCL 49-31-12.4, the rate increase should be suspended for 120 days.

A hearing was held on October 9 and 10, 1996, before the Commission. At a regularly scheduled meeting of the Commission on December 9, 1996, Commissioner Schoenfelder moved to reopen the record for the taking of more evidence. The motion was seconded by Commissioner Burg with Chairman Stofferahn dissenting. The hearing was set to continue on March 19, 1997 through March 21, 1997.

On January 15, 1997, AT&T moved the Commission to (1) disapprove the application of U S WEST for an increase in switched access rates and (2) to close this docket. A hearing on this motion was held before the Commission on January 23, 1997. Commissioner Nelson did not participate in these proceedings. At an ad hoc meeting on January 27, 1997, the Commission granted the motion of AT&T.

The matter was appealed to the Sixth Judicial Circuit Court for the state of South Dakota which remanded the matter to the Commission by Order dated May 29, 1997. The Commission received the Order on June 9, 1997. It directed that the remand be consistent with the Court's oral bench decision. The Court directed the Commission to handle the remand forthwith.

A pre-hearing conference was held on July 2, 1997, and a pre-hearing Order on Reopening Record was issued July 3, 1997. This Order rejected Commission staff's testimony in the October 1996 hearing, directed a new staff analysis in the case and certain financial reviews by staff, specified issues which the Commission wanted addressed consistent with its Motion of December 1996, and set forth certain scheduling deadlines, including the hearing date.

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<sup>1</sup>TAG members include Midco Communications, TCIC Communications, TeleTech, FirstTel, and Tel Serv.

A hearing on the reopened record was held on September 10 and 11, 1997 (second hearing). Commissioner Nelson participated in the pre-hearing conference and the hearing on the reopened record.

The matter was appealed to the Sixth Judicial Circuit Court which, by order dated May 12, 1998, affirmed the decision of the Commission but remanded it with specific instructions that the Commission consider the subject matter contained in Exhibits 154 and 160. The parties and Commission staff stipulated to submit the matter to the Commission without further hearing. The Commission established a briefing schedule and considered the arguments and authorities submitted.

Based on the record in this matter, the Commission makes the following Amended Findings of Fact and Conclusions of Law:

## FINDINGS OF FACT

References to the record as appealed to the Circuit Court will be "SR". Incidental references may be made to the transcripts of the pre-appeal proceedings. References to the record developed after that appeal will be to transcripts of various proceedings, exhibit numbers and other documents as are contained in the Commission docket.

I

On June 24, 1996, U S WEST filed for approval by the Commission its 1995 switched access cost study (SR 1). The application indicated that the cost study developed an overall average calculated rate of \$0.066 per minute required to recover the costs of providing switched access. Switched access rates are charges made by U S WEST to other telecommunications companies for access to U S WEST exchanges. The overall average calculated rate was recalculated by U S WEST at \$0.064 by a subsequent filing of another cost study (SR 194).

II

The rate that U S WEST had been charging per minute of use for switched access was \$0.0314. This rate was established by Commission Order in docket TC93-106 (SR 937) which adopted a stipulation between U S WEST and Commission staff (SR 939). This rate was an initial rate and the stipulation allowed for a phase-in of a higher rate at some future time even though a switched access rate of \$0.067 was justified by the cost study filed in that case (second hearing, TR 98). The rate U S WEST charged for switched access continued to be \$0.0314 until June 12, 1997, at which time U S WEST implemented a \$0.064 rate pursuant to SDCL 49-31-12.4 (letter, Lehner to Bullard, May 29, 1997, docket filing).

III

At the hearing before the Commission on October 9 and 10, 1996, U S WEST, through its witness Wayne G. Culp, introduced its cost study into evidence (Exhibit 3, Transcript 10). At the September 1997, hearing, Wayne G. Culp testified that U S WEST was relying upon the same cost study (second hearing, TR 15).



#### IV

U S WEST's cost study referred to in Finding III, above, was introduced into evidence at the October 1996 hearing by witness Wayne G. Culp as producing an "approximate" switched access rate of \$0.064 (SR194); it was an "estimated" cost (SR 199). Wayne G. Culp again testified at the September 10 and 11, 1997, hearing about the cost study and said that it produced an "estimated" switched access cost of \$0.064 (prefiled testimony, second hearing, Ex. 130, page 2). U S WEST's cost study, as presented and explained by its employee who was responsible for its assembly as an approximation or estimate, is speculative. Wayne G. Culp's testimony relative to U S WEST's cost study and the conclusion of the switched access cost reached in the cost study itself shall be accorded no evidentiary weight.

#### V

U S WEST sought approval of price regulation pursuant to SDCL 49-31-4.1 in docket TC94-121 (SR 913). Price regulation was sought for noncompetitive services (SR 913). Switched access services are to be determined by price regulation (SR 916-917, paragraph 10 b). Switched access services for residences and businesses are to have ceiling prices (SR 917, paragraph 11). The switched access rules currently in place, ARSD 20:10:27 through 20:10:29, are to be used in setting the ceiling price for switched access charges (SR 931, Order Approving Stipulation, paragraph X(d)).

#### VI

SDCL 49-31-1.4 requires the Commission to determine and consider five factors in setting a fair and reasonable price for noncompetitive services:

1. the price of alternative services;
2. the overall market for the service;
3. the affordability of the price for the service in the market it is offered;
4. the impact of the price of the service on the commitment to preserve affordable universal service; and
5. the fully allocated cost of providing the service.

The Commission makes the following findings regarding these criteria.

#### VII

The record contains no evidence of the price of an alternative switched access service to that provided by U S WEST; further, long distance providers cannot use switched access services provided by other local exchange companies to originate and terminate traffic in U S WEST's service territory. The record, however, does contain a discussion of by-pass of U S WEST's switches as an alternative to switched access service (SR 903, 905). The record is silent as to any prices charged for by-pass services.

#### VIII

The overall market for switched access service has many facets; among those in the record, the Commission specifically finds:

- a. Switched access charges by other local exchange companies within South Dakota are:

1. Local Exchange Carrier Association (an association of independent municipal and cooperative telecommunications companies) \$0.07072042 for originating traffic, \$0.09337 for terminating traffic (effective August 1, 1996);
2. Mt. Rushmore Telephone Company: \$0.087 originating and terminating traffic (effective July 1, 1994);
3. Kadoka Telephone Company: \$0.087 originating and terminating traffic (Docket TC93-033);
4. Dakota Telecommunications Cooperative: \$0.060524 originating traffic and \$0.100024 terminating traffic (Docket TC93-076) (SR653-655)
5. The Commission further considered a synopsis of switched access cost studies submitted to it in Exhibit 154 and concludes that the switched access costs listed on this exhibit (corrected September 8, 1997) show a range from \$0.024182 to \$0.288817 per minute of use.
  - a. Switched access rates established by the Commission for carriers listed in Exhibit 154 are not set through pricing regulation pursuant to SDCL 49-31-1.4.
- b. Switched access charges (current weighted average rate) which U S WEST charges in some other states it serves:
  1. Montana: \$0.043254;
  2. North Dakota: \$0.063725;
  3. Nebraska: \$0.066832;
  4. New Mexico: \$0.059442;
  5. Wyoming: \$0.0469467 (second hearing, late filed Exhibit 165)
- c. The trend in Minnesota and throughout the nation has been for such charges to go down (Thurman, second hearing TR 388).
- d. If U S WEST's rate as filed was to be implemented, the switched access rate U S WEST charges in South Dakota would be one of the ten highest access rates in the nation (Susskind, second hearing TR 521).
- e. By by-passing U S WEST's switched access service such as through private lines an alternative market exists; by raising switched access rates, switched access customers able to do so may be encouraged to by-pass U S WEST's facilities (SR 905).
- f. U S WEST has indicated a willingness to take less than the rate filed in its cost study in this docket. In the October 1996, hearing, U S WEST said that it would accept Commission staff's calculated rate of \$0.061 (SR551). In argument before the Court on the appeal in this docket, U S WEST's counsel indicated that U S WEST was willing to accept \$0.055 (hearing of May 16, 1997, TR 8). Further, U S WEST has immediately prior to this docket, accepted a switched access rate significantly less than its cost study justified ( Findings II and IX(I)).
- g. Based on the foregoing and as summarized, the Commission finds that the market for switched access varies depending upon geographical location of the provider of the service, the company providing the service, the presence of customers of

sufficient means to by-pass U S WEST's switches and what U S WEST has indicated it was willing to charge for switched access service.

## IX

The Commission finds the following factors to affect the affordability of the proposed switched access charges:

- a. As proposed by U S WEST, the switched access charge would amount to a 107% aggregate increase in access charges to TAG member companies (Susskind prefiled testimony, second hearing, p.3).
- b. If the switched access proposed by U S WEST was implemented and the TAG members did not raise their rates to end users, it would result in a drop of net income to TAG group members, in aggregate, in the amount of 58.1% (Susskind prefiled testimony, second hearing, p.4).
- c. The switched access rate as proposed by U S WEST would result in a monthly increase to reseller Midco's average business customers of \$50 to \$75 (Simmons, second hearing, TR 301).
- d. U S WEST's proposed switched access charge, if implemented, would be a determining factor as to whether reseller Midco could remain in business (Simmons, TR 293).
- e. Reseller FirstTel's majority of business is in South Dakota and its customer base consists of small businesses (Thurman, second hearing, TR 350). The impact of a switched access rate increase will be on FirstTel's customers located in communities other than the larger communities of Sioux Falls and Rapid City, South Dakota (Thurman, second hearing, TR 354).
- f. Access costs have a profound effect on the ability of long distance carriers (resellers) to earn a profit (Susskind, second hearing, TR 628).
- g. The proposed rate would be very burdensome on resellers who pay the switched access charge (Rislov, second hearing, TR 236). Intrastate switched access costs are the single largest cost ingredient to TAG group member companies' retail intraLATA toll product. (Susskind, second hearing, 487).
  1. The percentage of interstate use (PIU) for seven carriers ranged from forty to ninety-seven percent with the average being eighty-one percent (Exhibit 160, filed as confidential). The negative economic effect of an increase of the intrastate switched access rate upon switched access customers of U S WEST would vary among customers depending upon the PIU. The affordability of the switched access charge would vary among U S WEST's switched access customers.
- h. Rate shock is a term used to describe the effect on a utility's customers when a utility implements a significantly increased rate immediately or in a relatively short time span.

- i U S WEST proposed to implement its switched access rate immediately (Culp, first hearing, TR 44).
- j The implementation of U S WEST's switched access charge which represents over a 100% increase, or even at a rate which staff reached would constitute rate shock (Rislov, second hearing, TR 218, 249; Simmons, second hearing, TR 304).
- k U S WEST witness Culp conditionally admitted that a 100% increase in costs for a switched access customer constitutes rate shock (second hearing, TR 71).
- l U S WEST's switched access rate has been at \$0.0314 since March 30, 1994 (SR 937) and was implemented at that rate as a result of docket TC93-108 as a matter of policy by U S WEST (SR 896).
- m Sprint Communications Company witness Siplon testified that the proposed switched access rate would represent an increase in switched access charges of approximately 112% to her company (SR 329).
- n Because of the duration of the contracts which some resellers have with their respective customers, the costs which resellers would incur would be difficult to pass on to their customers (SR 733, 776 through 771 [sic, first hearing, should be TR 232 through 234], 793, 795) although at least one reseller, Midco, is reducing the duration of service contracts it enters into with consumers (Simmons, second hearing, TR 343).
- o The immediate implementation of a switched access rate as proposed by Commission staff is not in the public interest (Second hearing, Simmons, TR 304).
- p The immediate implementation of a switched access rate as proposed by U S WEST is not in the public interest (See paragraph q, below).
- q U S WEST proposed a switched access rate of \$0.064 (Finding IV); Commission staff's switched access rate is \$0.060905 (Est, prefiled, second hearing at p.9). The difference in these rates is \$0.003095.
- r The Commission concludes that the switched access rate as proposed by either U S WEST or by Commission staff constitutes a substantial increase from the rate U S WEST was charging immediately prior to the time it filed this docket, that the increase is not affordable by negatively affects its affordability to the resellers, that the extent of the negative effect of the proposed switched access rate will vary among U S WEST's switched access customers, that its immediate implementation would constitute rate shock, that to immediately implement such a rate as proposed by either U S WEST or Commission staff is not in the public interest, and that to immediately implement it would constitute an unjust and unfair burden upon switched access customers who subscribe to U S WEST's switched access services and, in turn, their customers.
- s The Commission finds that the immediate implementation of a switched access rate as proposed by either U S WEST or Commission staff not affordable by to U S WEST's switched access customers.

X

With regard to the impact of the price of the switched access service on the commitment to preserve affordable universal service, and consistent with the statutory definition of universal service at SDCL 49-31-1(11), the Commission finds that, based upon the factors in Finding IX, the switched access charge proposed by either U S WEST or Commission staff will impact the switched access customers and in turn their customers, the end users. Depending upon the ability of the respective switched access customers to absorb those costs, the people of South Dakota may sustain additional expense in obtaining rapid, efficient telecommunications service.

XI

Commission staff made several adjustments to the U S WEST cost study in the process of reaching their own switched access rate. The Commission finds that those known and measurable adjustments as made by Commission staff shall be:

- a. Property taxes paid by U S WEST shall be adjusted to reflect actual test year (1995) amounts of \$630,000 the total state amount or \$433,000 for the intrastate amount (Knadle, second hearing, prefiled at p.2).
- b. AT&T volume purchase rebate should reflect a \$56,000 total state credit or a \$37,000 intrastate credit (Knadle, second hearing, prefiled at p.3).
- c. U S WEST's proposal for interest synchronization should reflect Commission staff's pro forma rate base and rate of return recommendation and be calculated in the same manner as was done by U S WEST (Knadle, second hearing, prefiled at p.4).
- d. U S WEST shall not be allowed to include pension asset (pension funding in excess of pension expense) in the rate base (Rislov, second hearing, prefiled at pp.14,15).
- e. That portion of U S WEST's 1994 federal tax true-up which is short term in nature shall be removed as an adjustment to the rate base (Rislov, second hearing, prefiled at p.16).
- f. Reserve adjustments related to short-term turnaround of estimated versus actual taxes shall be excluded (Rislov, second hearing, prefiled at p.16).
- g. Return on equity shall be 11.5% (Rislov, second hearing, prefiled at p.17).
- h. As otherwise adopted on Schedule B, Sheet W to Commission staff's cost study, the removal of pay phone investment and expense, the corrections to minutes of use, the corrected traffic factors, the removal of the sold exchanges, and other adjustments as detailed on schedule A, sheet W and sheet X filed as part of staff witness Best's testimony shall be adopted (Best, second hearing, prefiled at p.9).

XII

For fully allocated costs, the Commission will consider the cost study with adjustments made by and as verified by Commission staff. This cost study, developed in accordance with the Commission's rules ARSD 20:10:27 through 20:10:29 is based on a fully allocated cost model (ARSD

1). The switched access charge which the Commission shall consider is \$0.060905 (Best, prefiled, p.9).

### XIII

The Commission further finds that U S WEST proposed to implement the switched access rate in this docket on August 1, 1996 (SR 65). The implementation of the rate was suspended for a period of 120 days from the proposed effective date (SR 154). U S WEST of its own volition continued to charge \$0.0314 following the expiration of the suspension of the proposed rate up to the remand of this docket from the Circuit Court to the Commission. Following the remand of this docket to the Commission from the Circuit Court, U S WEST imposed a switched access rate of \$0.064 on June 13, 1997 (See Finding II).

### XIV

Based upon all of the factors specified in SDCL 49-31-1.4 and as recited in Findings VIII through XIII, above, the Commission finds that a fair and reasonable per minute price which U S WEST may charge for switched access service in South Dakota, effective on the following dates shall be:

June 13, 1997	\$0.0364;
December 1, 1997	\$0.0414;
June 1, 1998	\$0.0465;
December 1, 1998	\$0.0515;
June 1, 1999	\$0.0565;
December 1, 1999	\$0.060905.

### XV

The Commission further finds that U S WEST's overall, allowed rate of return for switched access service shall be 9.62% (Best, prefiled, second hearing, p.9)

## CONCLUSIONS OF LAW

### I

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31 and ARSD Chapters 20:10:27 through 20:10:29, inclusive.

### II

This is a contested case under SDCL Chapter 1-26.

### III

Pursuant to SDCL 49-31-12.4(3) U S WEST has the burden to prove that its proposed switched access rate is fair and reasonable.

IV

On issues of fact, the Commission may judge the credibility of witnesses and give appropriate weight to the testimony of each of them, including the reasonableness of the testimony when it is considered in the light of all evidence in the case. It may also give appropriate weight to evidence other than testimony which has been received.

V

The determination of the public interest is the function of the Commission and what it views as the public interest may change with or without a change in circumstances.

VI

This docket as filed by U S WEST for switched access charges is subject to price regulation.

VII

In setting a fair and reasonable price for noncompetitive services, the Commission shall determine and consider five factors which are:

1. the price of alternative services;
2. the overall market for the service;
3. the affordability of the price for the service in the market it is offered;
4. the impact of the price of the service on the commitment to preserve affordable universal service; and
5. the fully allocated cost of providing the service.

VIII

In a price regulation docket, a cost study, developed pursuant to ARSD 20:10:27 through 20:10:28, is but one of five factors set forth in SDCL 49-31-1.4 which the Commission must consider.

IX

The Commission concludes that U S WEST has not met its burden of proof that its proposed switched access price is fair and reasonable.

X

The Commission concludes, based upon the criteria in SDCL 49-31-1.4, that a fair and reasonable per minute of use price which U S WEST may charge for switched access services in South Dakota, effective on the following dates shall be:

June 13, 1997	\$0.0364;
December 1, 1997	\$0.0414;
June 1, 1998	\$0.0465;
December 1, 1998	\$0.0515;
June 1, 1999	\$0.0565;
December 1 1999	\$0.060905.

XI

The Commission concludes that amounts charged by U S WEST for its switched access charges which are in excess of those prices established in these Amended Findings of Fact and Conclusions of Law are unfair and unreasonable.

XII

The Commission further concludes that, pursuant to SDCL 49-31-12 4(5), that U S WEST shall refund or credit to its switched access customers an amount representing the difference between the rate which it imposed and billed and the prices which the Commission has herein adopted, with interest on those amounts to be calculated at the Commission staff's recommended and allowed rate of return of 9.62% per annum.

Based upon the foregoing Amended Findings of Fact and Conclusions of Law, it is therefore

ORDERED that a fair and reasonable price for switched access charges shall be as determined in these Amended Findings of Fact and Conclusions of Law, and it is further

ORDERED that U S WEST make a refund or credit to its switched access customers consistent with these Amended Findings of Fact and Conclusions of Law, and it is further

ORDERED that Findings of Fact and Conclusions of Law as proposed by the parties and filed in this docket are hereby refused; and it is further

ORDERED that Amended Findings of Fact and Conclusions of Law as proposed by U S WEST and filed in this docket are hereby refused.

#### NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Amended Order was duly entered on the 23<sup>rd</sup> day of September, 1998. Pursuant to SDCL 1-26-32, this Amended Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 23<sup>rd</sup> day of September, 1998.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
Served by:	<u>Melanie Kells</u>
Date:	<u>9/24/98</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfeld  
LASKA SCHOENFELDER, Commissioner